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No. 83-

In the Supreme Court of the United States

October Term, 1983

BABCOCK MEMORIAL PRESBYTERIAN CHURCH, a body corporate, et al.,

Petitioners,

vs.

THE PRESBYTERY OF BALTIMORE OF THE UNITED PRESBYTERIAN CHURCH IN THE UNITED STATES OF AMERICA, et al.,

Respondents.

PETITION FOR WRIT OF CERTIORARI TO THE COURT OF APPEALS OF MARYLAND

WARREN JACKSON WILLIAMSON
(Counsel of Record)
P.O. Box 467
Greenville, Alabama 36037
(205) 382-2635

MARK E. WERNER, II
1102 Court Square Building
Baltimore, Maryland 21202

DAVID S. PEARL
1209 Court Square Building
Baltimore, Maryland 21202
Attorneys for Petitioners

E. L. MERDENHALL, INC., 926 Cherry Street, Kansas City, Mo. 64106, (816) 421-3030

QUESTION PRESENTED

Whether the First and Fourteenth Amendments to the United States Constitution prohibit a State Court from awarding local church property to a parent denomination with a hierarchical ecclesiastical structure after a due severance of the denominational connection by the local church where there is (1) no provision in the denomination's constitution prohibiting such a severance or imposing any penalty or forfeiture of property upon such action and (2) no provision in the denomination's constitution nor in any instrument of title imposing an express trust on the local church property on behalf of the parent denomination?

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vs.

THE PRESBYTERY OF BALTIMORE OF THE UNITED PRESBYTERIAN CHURCH IN THE UNITED STATES OF AMERICA, et al.,

Respondents.[2]

PETITION FOR WRIT OF CERTIORARI TO THE COURT OF APPEALS OF MARYLAND

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1. Petitioners are: Robert B. Louthan, Howard E. Hill as Pastor and Assistant Pastor of Babcock Memorial Presbyterian Church; Donald J. Dean, Jr., R. Dale Mershon, Forrest H. Williams, S. Ralph Reed, Jr., Raymond R. Baker, Bruce B. Burns, John J. Vanko, Donald P. Childs, Mirvin H. Metzger, Charles H. Masters, James D. Foote, William E. Cole, James B. Pfeiffer as members of Session of Babcock Memorial Presbyterian Church; Kathleen M. Brown, Donald L. Evans, J. Fred Maienshein, Richard S. Myer, Craig S. Habicht, Donald B. Munro, Robert D. Fagan, Charles G. Walker, John E. Cyphers, and Marvin H. Stever as members of Board of Trustees of Babcock Memorial Presbyterian Church; and Mark E. Werner II, Lawrence P. Steele, Jr., Gary Armstrong, Harry Fisher, Howard M. Flynn, and Roy Pauley as members of Session and Board of Trustees of Merritt Boulevard Presbyterian Church of Dundalk, Inc.

2. Respondents are: The Presbytery of Baltimore of The United Presbyterian Church in the United States of America, an unincorporated association; and Richard L. Werley, George R. Demass, Joseph Hsu, Robert S. Baird, H. Burke Carr, William R. Hildebrand, Arthur H. Joslin, Jr., Mary R. Lawrence, Marshal McCord, W. Bruce Shoemaker, Steven Stevens and Russell C. Walters, constituting an Administrative Commission of The Presbytery of Baltimore of The United Presbyterian Church in the United States of America.

Babcock Memorial Presbyterian Church, a body corporate, et al., respectfully petition for a Writ of Certiorari to review the judgment of the Court of Appeals of Maryland in the above entitled case.

OPINION BELOW

The Opinion of The Court of Appeals of Maryland is reported at 464 A. 2d 1008 (Md. 1983) (App. A p. A1). The Order of The Court of Appeals of Maryland denying reconsideration is not reported (App. B p. A19).

JURISDICTION

The judgment of The Court of Appeals of Maryland was entered on August 17, 1983. The Order of The Court of Appeals of Maryland denying a timely Petition for Reconsideration was entered on September 27, 1983. The jurisdiction of this Court is invoked under 28 U.S.C. Section 1257(3) and 28 U.S.C. Section 2101(c).

CONSTITUTIONAL PROVISIONS INVOLVED

U. S. Const., Amend. I:

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof * * * .

U. S. Const., Amend. XIV, Sec. 1:

* * * nor shall any state deprive any person of life, liberty, or property, without due process of law * * *.

STATEMENT OF THE CASE

On June 25, 1891, the Park Presbyterian Church of Baltimore City (later re-named Babcock Memorial Presbyterian Church-hereinafter Babcock) was incorporated under the General Religious Corporations Law of the State of Maryland. The original Charter contained the following articles:

> Article I: The object of this Corporation shall be the establishment and maintenance of a Presbyterian Church in the City of Baltimore.
>
> * * *
>
> Article VI: The Park Presbyterian Church of Baltimore City shall forever remain a Presbyterian Church in accordance with the Standards of the Presbyterian Church of the United States.

Babcock Memorial Presbyterian Church's charter has been amended several times, including the deletion of Article VI on March 23, 1981. All the real and personal property of Babcock is titled in the corporation without any reference to any denominational affiliation. Other than certain specific minor donations, all funds used to acquire and maintain Babcock's property (both real and personal) resulted from the efforts and donations of the local congregation and no funds were given to Babcock by any higher United judicatories.

In 1893, the Park Presbyterian Church was enrolled as a member of the Presbytery of Baltimore of the Presbyterian Church in the United States of America (one of the predecessors of the United Presbyterian Church in the United States of America-herein called United). United is an association of local United Presbyterian

churches organized into and governed by an ecclesiastical connectional, hierarchical structure consisting of four district bodies known as judicatories. The composition, structure and powers of these judicatories, as well as other provisions relating to the government of and relations within United are found in the Constitution referred to as the Book of Order. The judicatories of United in ascending order of authority according to the powers given or reserved to them by The Book of Order, are: (1) the Session of the local church; (2) the Presbytery, composed of all the United Presbyterian Churches in a geographical area; (3) the Synod, generally composed of the presbyteries in a given state or region; and (4) the General Assembly, the highest governing body within United.

The Book of Order contains several provisions relating to the powers of the governing bodies of the local church. These bodies are the Session, the body charged with having authority over all the affairs of the local church, and the Trustees, who in Maryland are the members of the corporation which is the legal residuary of title to the property of the local church. There are also some provisions in the Book of Order relating to the ownership of property, both real and personal, by local churches, and the relationship to such property by the higher judicatories of the United Presbyterian Church. A brief review of some of these sections will be instrumental in the Court's understanding of the case.

Section 41.08 (App. F) accords authority over all affairs and activities of the local church to the Session "except such matters as may, by this Form of Government, be specifically accorded to the pastor, to the congregation, or to a higher judicatory." This section also places the Board of Trustees directly under the authority of the Session

Section 62.04 (App. F) grants to the Board of Trustees the authority to "receive, hold, encumber, manage and transfer property, and to facilitate the management of its civil affairs in such manner as may be directed by the session of the particular church from time to time and according to the Constitution". The authority granted to the Board of Trustees is limited by the provisions of Section 62.08 (App. F) which requires that "they shall deal with such property only as they may be authorized or directed by the session, and their authority in respect to the selling, mortgaging, and leasing of real property shall be subject also to any rights reserved to the congregation by civil law or by the by-laws of the particular church and to the permission of presbytery as herein provided. The Trustees of a particular church shall exercise any other powers or authorities vested in them by civil law in conformity with the actions of the session as conveyed to them from time to time."

The circumstances requiring the permission of the Presbytery referred to in Section 62.08 are enumerated in Section 62.12, which states:

> A particular church shall not sell, mortgage or otherwise encumber any of its real property . . . without the written permission of the presbytery transmitted through the session of the particular church.
>
> A particular church shall not lease its real property used for purposes of worship, or lease for more than five years any of its other real property, without the written permission of the presbytery transmitted through the session of the particular church.

A final section dealing with the property of a local church is Section 62.11 which provides as follows:

> Whenever hereafter a particular church is formally dissolved by the presbytery, or has become extinct

by reason of the dispersal of its members, the abandonment of its work, or other cause, such property as it may have, both real and personal, shall be held, used and applied for such uses, purposes, and trusts as the presbytery may direct, limit and appoint, or such property may be sold or disposed of as the presbytery may direct, in conformity with the Constitution of The United Presbyterian Church in the United States of America.

In the Trial Court this case was submitted on an "Agreed Statement of Facts" stipulated by the parties. In this Stipulation the following facts were agreed not to be in dispute and were deemed admitted by the parties, to wit:

1. Except for 62.11 quoted above, there is no specific provision in the Constitution of UNITED or any relevant document of title involved in the case at Bar, which gives the Presbytery of Baltimore or any higher judicatory in UNITED, any proprietary or contractual interests in the real or personal property involved in this lawsuit. Likewise, on March 14, 1981, and prior to that date, there was no specific provision in the Constitution of UNITED imposing an express trust on local church property for the benefit of the presbytery, the synod, the General Assembly or the denomination as a whole.

2. On March 14, 1981, and to the present date, Babcock has not been dissolved by the Presbytery or become extinct by reason of the dispersal of the church's members, the abandonment of the church's work or other cause. Nor has Babcock's Board of Trustees been dissolved or its members removed by any action of the Presbytery.

3. There are no express provisions in the Constitution of UNITED outlining any method or procedure for a local UNITED Church to change its denominational affiliation, nor is there any express provision permitting or prohibiting a local church to withdraw from UNITED. Except as Section 62.11 may apply, there are no specific provisions in the Book of Order imposing a penalty or forfeiture of property upon such a withdrawal.

4. Both on June 25, 1891, when Park Presbyterian Church was originally incorporated, and at present, there was and is no specific provision in the Constitution of the denomination mandating that a local church include language in its corporate charter or deeds requiring the local church or its property to always remain a part of UNITED.

5. The Board of National Mission of the Presbyterian Church in the United States of America loaned Babcock $5,000.00 secured by a mortgage dated September 26, 1951. This mortgage contains the following provision: "Whereas this mortgage and the obligation which it secures shall become due and payable immediately *upon the mortgagor's severing its denominational connection with the General Assembly of the Presbyterian Church in the United States of America,* ceasing to exist as an organization, failure to use the structure erected on the premises described herein as a church building, or divesting itself to the title to the premises." (App. G) (Emphasis supplied).

Certain disputes, ecclesiastical in nature, arose between Babcock and United, culminating in a decision by the Session of Babcock that affirmative action be taken. On March 14, 1981, Babcock's Session determined that appropriate actions be taken to sever Babcock's relationship

with United and its constituent bodies. On March 23, 1981 at a duly constituted meeting called by the Session and Board of Trustees on March 14, 1981, the membership of the Babcock congregation voted by an overwhelming majority (228 to 6) to withdraw from United and its constituent judicatories. At that same meeting, the membership of the congregation approved, ratified and adopted as their action the actions taken by the Session and Board of Trustees which included the severing of Babcock's relation with United and Babcock's conveying all of its real and personal property as gifts to Merritt Boulevard Presbyterian Church of Dundalk, Inc. (hereinafter called Merritt). Merritt was incorporated in Maryland on April 15, 1980 as an unaffiliated Presbyterian Church.

On March 22, 1981, the Administrative Commission of United, which was appointed by Presbytery to replace the Session at Babcock, took control of the Babcock main church building and chapel by placing security guards in one or both buildings. On March 23, 1981, with the assistance of those security guards, these representatives of United required certain Babcock congregants to leave the premises and then changed the locks to the Babcock Church buildings. Requests to United for possession of the Babcock buildings were denied.

Merritt then filed suit in ejectment and trespass to regain possession of the property against United and its representatives. United and its representatives then filed a suit in equity against Babcock, its former pastor, its former associate pastor, a number of persons who were members of the deposed Session of Babcock, the various individual members of the Board of Trustees of Babcock, Merritt, and the members of the Session of Merritt. It sought an interlocutory and permanent injunction against interference with United and its representatives in the exercise of its authority over the affairs of Babcock, that

Merritt and the members of its Session be ordered to transfer and convey to Babcock the real and personal property received by it from Babcock, an accounting, and other relief. Former members of Babcock filed a counterclaim for release of its personal property.

The cases were consolidated and submitted to the Circuit Court for Baltimore County on the Agreed Statement of Facts. The Trial Court found that United maintained a congregational polity with respect to the use and ownership of local church property and that the original Babcock Session and its Board of Trustees were legally entitled to make absolute and irrevocable gifts of that church's real and personal property to Merritt (App. D). An appeal was filed with the Court of Special Appeals of the State of Maryland, which reversed the decision of the Trial Court 52 Md. App. 428, 449 A. 2d 1190 (1982). The Court of Appeals of Maryland granted a Writ of Certiorari. On hearing the Court of Appeals confirmed the decision of the Court of Special Appeals (App. A). On September 27, 1983, the Court of Appeals denied Petitioners' timely Petition for Reconsideration (App. B). This Petition for Writ of Certiorari followed.

The federal questions here sought by Petitioners to be reviewed were raised as follows:

> 1. In oral argument by Counsel for Petitioners before the Trial Court, it was stated "Now then, having dealt then with a little bit of the nature of the church, this Court is well aware that the First Amendment to the Constitution of the United States states that Congress shall, in part, make no law respecting the establishment of religion or prohibiting the free exercise thereof. And since now in our system of jurisprudence the Fourteenth Amendment has made that First Amendment applicable to the states, it is applicable to Maryland, and you might as well say Mary-

land can make no law respecting the establishment of religion nor deny the free exercise thereof. Therefore, since the parties to this present litigation are religous organizations, any resolution of the issue in this case must stand the scrutiny by this civil court of the prohibitions of the First Amendment litigation. So I want to now spend a little time with this Court discussing the prohibitions that are developed in the First Amendment litigation as they apply to this case". Then followed a long argument concerning these federal questions.

2. In Petitioners' Brief in the Court of Special Appeals of Maryland, the first statement relates to these federal questions, as follows: "Since the parties to this litigation are religious organizations, the Trial Court recognized that any resolution of the issues must withstand the scrutiny of the judicial principles and restraints developed in First Amendment litigation regarding the establishment and free exercise of religion clauses". Then follows a long discussion of these federal questions as they relate to the First Amendment to the Constitution of the United States.

3. Petitioners raised as one of the Questions presented in their brief to the Court of Appeals as follows: "Whether the Court of Special Appeals violated the First and Fourteenth Amendments to the United States Constitution. . ."

4. In each of the briefs submitted by Petitioners to the Trial Court, the Court of Special Appeals and the Court of Appeals, Amendments 1 and 14 to the Constitution of the United States were mentioned as constitutional provisions involved in this case.

5. Petitioners' Motion for Reconsideration in the Court of Appeals of Maryland (App. C) raised these federal questions throughout.

REASONS FOR GRANTING WRIT

I

THE COURT OF APPEALS OF MARYLAND HAS DECIDED A FEDERAL QUESTION IN A WAY IN CONFLICT WITH COURTS OF LAST RESORT IN CALIFORNIA AND SOUTH DAKOTA INVOLVING THE WITHDRAWAL OF A LOCAL CONGREGATION FROM THE UNITED PRESBYTERIAN CHURCH IN THE UNITED STATES OF AMERICA.

On March 23, 1981 Babcock Memorial Presbyterian Church (Babcock), by a vote of 228 to 6, in a congregational meeting duly called for that purpose, voted to withdraw from the United Presbyterian Church in the United States of America (United) and its constituent judicatories, including the Presbytery of Baltimore (Presbytery) and sought to retain its local church property after the severance. The Court of Appeals of Maryland held that United had an interest in the Babcock property and thus refused to allow the local congregation at Babcock to withdraw and retain its local church property. Thus the Court of Appeals of Maryland has awarded an interest in local church property titled in Babcock Memorial Presbyterian Church, a body corporate, to the Presbytery of Baltimore, a judicatory of United, after a due severance of the denominational connection by the local church even though in the United Constitution there was no provision prohibiting such a severance or imposing any penalty or forfeiture of property upon such action, and no provision imposing an express trust on the local property on behalf of United; and there was no language in the instrument by which the local church acquired the property showing any connection with United or expressing any trust therein for the denomination.

In the case of *Presbytery of Riverside v. Community Church of Palm Springs*, 89 Cal. App. 3rd 910, 152 Cal. Rptr. 854 (Ct. App., 4th Dist., 2nd Div., 1979), *cert. den.* 444 U.S. 974, 100 S. Ct. 469, 60 L. Ed. 2d 389 (1979) (*Community Church*) the appellate courts of California were faced with a factual situation almost identical to that in the case at bar. That case also involved the question of ownership of local church property by a church which had formerly been a member of United and withdrawn. The same Book of Order (church constitution) was presented to both the California and Maryland courts. The California Appellate Court held that the local church was the absolute owner of its property, that the local church had a right to withdraw from United, and that United did not have any interest in the local church's property. The Maryland Court reached the exact opposite conclusion in *Babcock* although both Courts were using the neutral principles of law approach.

More recently, the South Dakota Supreme Court has decided, under the neutral principles of law approach developed in *Jones v. Wolf*, 443 U.S. 595 (1979), that a local congregation could withdraw from United and keep its local church property. The South Dakota Court initially adopted the neutral principles approach in the case of *Foss v. Dykstra*, S.D., 319 N.W. 2d 499 (1982). After that case had been remanded to the Trial Court for a review in light of the adoption of the neutral principles approach, the South Dakota Supreme Court re-examined the same church constitution presented to the Court of Appeals of Maryland in *Babcock* and rendered an opinion on November 23, 1983 (App. E) that this constitution did not contain any language granting to the denomination any interest in the local church property and that the local church had a right to withdraw from United, by majority vote, and keep its local church property.

A comparison of the facts in the California case of *Community Church*, and the Maryland case of *Babcock* will show the factual similarities between the cases. The facts in *Babcock* have been previously set out in the Statement of the Case. In *Community Church* we see the following:

1. "It is undisputed, of course, that Community Church has title to and possession of all the property in dispute both, real and personal". 89 Cal. App. 3d at 931.

2. "The original Articles of Incorporation of Community Church recited that it was 'a church organized under and adhering to the doctrines and disciplines of the Presbyterian Church in the United States of America' and provided that the corporation 'shall be at all times subject and adhere to the doctrines and disciplines of the Presbyterian Church in the United States of America' . . .". 89 Cal. App. 3d at 929.

3. "Community Church unilaterally terminated its affiliation with UPCUSA". 89 Cal. App. 3d at 914.

4. "UPCUSA claims ownership and the right to possession of all the real and personal property standing in the name of Community Church and possessed by it on the date it terminated its affiliation with UPCUSA". 89 Cal. App. 3d at 914.

5. United "is organized in a hierarchical structure of ascending representation levels of ecclesiastical authority called judicatories. That part of its constitution dealing with the system of government is designated 'the Book of Order' ". 89 Cal. App. 3d at 915.

6. "The congregants of Community Church, by an overwhelming majority, voted to withdraw from United. Then, United appointed an Administrative Commission to take over Community Church". 89 Cal. App. 3d at 918-919.

7. "With the exception of a small amount of money received from the Presbytery of Riverside early in Community Church's history, all funds used to purchase and improve properties of Community Church came from its members or non-member individuals residing in or visiting the desert area of Riverside County and not from or through the efforts of Plaintiffs (UPCUSA)". 89 Cal. App. 3d at 929.

Likewise a comparison of the facts in the South Dakota case of *Foss v. Dykstra*, and the Maryland case of *Babcock* will show the factual similarities between these cases. In *Foss v. Dykstra* we see the following:

1. "Record title is vested in local church corporation, organized and existing under the laws of South Dakota". (App. E p. A60).

2. "On November 24, 1980, due to doctrinal differences, a majority of the members of a Local Church by vote of 198 to 32 adopted a 'Resolution of Secession' to sever affiliation with UPCUSA". (App. E pp. A58).

3. "National Church responded by initiating this action to obtain, use, control and possession of a Local Church's real and personal property". (App. E p. A58).

4. "The parties agree that the United Presbyterian Church in the United States of America is a hierarchical organization as distinguished from congregational form of church associations". 319 N.W. 2d at 499.

5. Local Church borrowed money from United and gave a mortgage as security. This mortgage contained a provision that:

"This mortgage and the obligation which it secures shall become due and payable immediately upon the

mortgagor's severing its denominational connection with the General Assembly of United Presbyterian Church in the United States of America. . .". (App. E p. A61).

The conclusions reached by the Maryland, California and South Dakota Courts based on similar factual situations as they scrutinized and applied neutral principles to the Constitution of United, are as follows:

A. In *Babcock* the Maryland Court concluded:

1. . . . "that Babcock is not a congregational church but the relationship here is one that is hierarchical in nature. Accordingly the Presbytery has an interest in this property". (App. A p. A16).

2. By failing to rule on Babcock's right-to-withdraw in its initial opinion (App. A) and denying Babcock's Motion for Reconsideration (App. C), the Court in effect denied Babcock the right, by majority vote, to withdraw from the ecclesiastical jurisdiction of United and maintain the ownership and right to control its local church property.

B. In *Community Church* the California Court concluded:

1. "It is undisputed that a local church within UPCUSA may withdraw and terminate its affiliation". 89 Cal. App. 3d at 924.

2. "The property of a local church, even one that is part of a general church organization of a hierarchical structure, is held in trust by a religious non-profit corporation for the benefit of the local church congregation". 89 Cal. App. 3d at 927.

C. In *Foss v. Dykstra* the South Dakota Court concluded:

1. "We determined that Local Church is entitled to control over this local church property and that National Church has no interest therein". (App. E p. A68).

2. "Here, the majority of members of Ebenezer United Presbyterian Church voted to withdraw from UPCUSA. Since there are no express provisions to overcome this presumption of majority representation, this majority represents Ebenezer United Presbyterian Church. Accordingly, we affirm Trial Court's decision awarding control of local church property to a Local Church". (App. E p. A67).

It is obvious that these State Courts have differing opinions as to the exact meaning of this Court's instructions in *Jones v. Wolf*, and consequently have rendered conflicting decisions affecting local churches of the same denomination. It is clear that in *Jones v. Wolf* this Court stated that unless there is express language of trust in legally cognizable form in the instruments of title or in the constitution of the denomination, then no such trust can be inferred or implied through a searching inquiry into the church constitution. But State Courts continue to render conflicting opinions on this Federal Question. Not only have the courts of last resort of the jurisdictions of Maryland, California and South Dakota issued contrary opinions involving the same denomination; but litigation is also pending at various stages involving local congregations who have withdrawn from United or The Presbyterian Church in the United States in the States of New York,[3]

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3. *First Presbyterian Church of Schenectady, et al. v. United Presbyterian Church in the United States and Presbytery of Albany.* This case involves a United church and the United denomination. Judgment rendered February 12, 1981 in Supreme Court of New York, Saratoga County awarding property to local church that had withdrawn from United. Order reversing entered by Supreme Court of New York, Appellate Division of the Third Judicial Department on March 21, 1983. Case now on appeal to Court of Appeals of New York.

Ohio,[4] Michigan,[5] Pennsylvania,[6] Missouri,[7] Tennessee,[8]

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4. *Bernadine Christensen, et al. v. Richard Roumfort, et al.* Opinion and Judgment entered on September 13, 1983 in the Court of Common Pleas, Case No. C.V. 983, in Mahoning County, Ohio. This case involves Tabernacle United Presbyterian Church which voted to withdraw from Eastminster Presbytery of United. Trial Court concluded that local church could withdraw and keep its property. Case is on appeal.

5. *Calvary Presbyterian Church v. Presbytery of Lake Huron of the United Presbyterian Church in the United States of America.* This case involves a local church in Flint, Michigan, which withdrew from the United denomination. On February 28, 1983, the Trial Court, the Circuit Court for the County of Genessee, entered a judgment for the United. Case is now on appeal.

6. *The Presbytery of Beaver-Butler of the United Presbyterian Church in the United States, et al. v. Middlesex Presbyterian Church, et al.* This case involves a United local church which withdrew from the United denomination. The Trial Court, the Court of Common Pleas of Butler County, Pa. awarded the property to the local church. The case is now on appeal in the Commonwealth Court of Pennsylvania, Docket No. 1740-CD-1982.

The Presbytery of Philadelphia of the United Presbyterian Church in the United States of America, et al. v. The Tenth Presbyterian Church, et al. This case involves a United local church which withdrew from the United denomination. By Judgment entered July 26, 1983, the Trial Court ruled that the local church could not withdraw from United and retain control of its property. Case is on appeal in the Commonwealth Court of Pennsylvania.

The Presbytery of Donegal v. Wayne Wheatley, et al. in the Court of Common Pleas of Chester County, Pa., Docket No. 1456 (In Equity, 1981). This case involves Faggs' Manor Presbyterian Church of Cochranville, Pa. which withdrew from the United denomination. Case being held in Trial Court awaiting outcome of other similar cases.

The Presbytery of Donegal v. S. Reed Calhoun, et al. in the Court of Common Pleas of Chester County, Pa., Docket No. 78-80 (In Equity). This case involves Coatesville Presbyterian Church, a local church, which withdrew from the United denomination. Case being held in Trial Court awaiting outcome of other similar cases.

Presbytery of Philadelphia, et al. v. J. R. Miller Memorial Presbyterian Church, et al. in the Court of Common Pleas of Delaware County, Pa., Docket No. 80-12077. This case involves a local Presbyterian church which withdrew from the United denomination. Case is being held in Trial Court awaiting outcome of other similar cases.

Printer's Note: Due to the length of the footnotes and the page, footnotes 7 and 8 can be found on p. 18.

Texas.[9] Additionally there are many cases pending involving other denominations on these same issues.

It is of the utmost importance that the First Amendment rights guaranteed under the Constitution be uniformly applied throughout the nation. Consequently a further clarifying opinion from this Court is required.

II

THE COURT OF APPEALS OF MARYLAND INCORRECTLY INTERPRETED THIS COURT'S RULING IN JONES V. WOLF, IN GRANTING UNITED AN INTEREST IN THE PROPERTY OF A WITHDRAWN LOCAL CHURCH IN THE ABSENCE OF TRUST LANGUAGE IN SOME "LEGALLY COGNIZABLE FORM" IN FAVOR OF THE DENOMINATION.

In *Jones v. Wolf* this Court cautioned denominations, such as United, that they should modify deeds, corporate charters, or church constitutions to recite an express trust

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7. *Presbytery of Eligah Parish Lovejoy, et al. v. Memorial Presbyterian Church of St. Louis, et al.* This case involves a local church which withdrew from the United denomination. The Trial Court the Circuit Court of the City of St. Louis, Missouri on December 16, 1982 held that under the rule of deference of *Watson v. Jones*, 80 U.S. 679 (1871), which has been followed by Missouri, the denomination was entitled to the local church's property. Case is now on appeal in the Missouri Court of Appeals, Eastern District, Docket No. 46810.

8. *Presbytery of Middle Tennessee, et al. v. The Madison Presbyterian Church, Inc., et al.* This case involves a local church which withdrew from the PCUS denomination (same denomination in *Jones v. Wolf* case). On August 5, 1983 the Trial Court in the Chancery Court for the State of Tennessee, 9th Division, Davidson County, rendered an opinion awarding the property to the local church under the *Jones v. Wolf* decision. Case is on appeal to Supreme Court of Tennessee.

9. *Grace Union Presbytery, Inc. v. Casa Linda Presbyterian Church*, Cause No. 81-3584J in the 191st District Court of Dallas, Texas. This case involves UPCUSA-PCUS Union Presbytery and church. Case is pending on motion for summary judgment in the Trial Court.

if the denomination expected to exert control over local church property; and therein this Court stated that if such trust language existed, civil courts would be bound to enforce it provided it was contained in some "legally cognizable form". 443 U.S. at 606. In *Jones v. Wolf* this Court continued by cautioning state courts that adopted the neutral principles approach for resolving church property disputes to review religious documents using "special care to scrutinize the document in purely secular terms" to determine if the parties intended to create a trust. 443 U.S. at 604. The Courts of the State of Maryland were one of the originators of the neutral principles approach in such disputes, *Maryland and Virginia Eldership v. Church of God at Sharpsburg*, 249 Md. 650, 241 A. 2d 691 (1968), *vacated* 393 U.S. 528, *reaff'd*, 254 Md. 162, 254 A. 2d 162 (1969), *appeal dismissed*, 396 U.S. 367 (1970), and the Court of Appeals of Maryland acknowledged the continued use of that approach in the present case (App. A p. A17). However it is obvious that the Court of Appeals of Maryland erred in its attempt to apply the neutral principles analysis, as refined by this Court in *Jones v. Wolf*, to the facts presented in the present case.

The Court of Appeals of Maryland apparently held that United, or its affiliate the Presbytery of Baltimore, had an interest in this local church property for two separate reasons. First, the Court held that because United was "hierarchical in nature" the Presbytery had an interest in the local church property. The Court noted as follows:

> . . . that Babcock is not a congregational church but the relationship here is one that is hierarchial [sic] in nature. Accordingly, the Presbytery has an interest in this property (App. A p. A16).

This reasoning is diametrically opposed to that contained in this Court's opinions in *Presbyterian Church v. Hull*

Church, 398 U.S. 440, 21 L. Ed. 2d 658, 89 S. Ct. 601 (1969) and in *Jones v. Wolf*. In this Court's initial enunciation of the neutral principles approach in *Hull*, the Court noted that the denomination there involved, Presbyterian Church in the United States (PCUS), was "hierarchical". 21 L. Ed. 2d at 661. Also, in *Jones v. Wolf*, this Court noted in its initial paragraph that the denomination there involved, PCUS, was a "hierarchical church organization". 443 U.S. at 597. The denominational similarities between PCUS and United were demonstrated by their merger in June 1983 to form the denomination known as the Presbyterian Church in the United States of America (PCUSA). In neither *Hull* nor *Jones v. Wolf* was the mere fact that the denomination was "hierarchical" alone sufficient to determine that the presbyteries there involved had any interest in the local church property. For a court to make such a determination without a review of the particular portions of the church constitution involving property would be a clear violation of the Establishment Clause of the First Amendment. In the very first sentence of *Jones v. Wolf*, this Court wrote:

> This case involves a dispute over the ownership of church property following a schism in a local church affiliated with a *hierarchical* church organization. 443 U.S. at 597 (emphasis added).

If the mere fact that the structure of the denomination was "hierarchical" had been sufficient to give the denomination an interest in the property, then *Jones v. Wolf* would have ended with that first sentence. If this Court had applied the judicial principle in *Jones v. Wolf* that the Maryland Court applied in the case at bar, then the local church property would have been awarded to the denomination rather than to the majority faction of the local church. But when *Jones v. Wolf* was remanded to the Su-

preme Court of Georgia in the light of this Court's decision, the Supreme Court of Georgia held:

> The Trial Court found that the Vineville Presbyterian Church had been a connectional church within the Augusta-Macon Presbytery and the Presbyterian Church in the United States but correctly held that more than a mere connectional relationship between the local church and the general church must exist to give rise to property rights in the general church. 243 S.E. 2d at page 864.

The Court of Appeals of Maryland obviously violated the Establishment Clause of the First Amendment and misapplied the neutral principles approach by granting to the Presbytery an interest in this local church property simply because the denomination was "hierarchial [sic] in nature".

The dangers of such an approach were pointed out in the recent case of *Piletich v. Deretich,* Minn., 328 N.W. 2d 696, decided by the Supreme Court of Minnesota on December 30, 1982. That case involved the same Serbian Eastern Orthodox denomination that was involved in the case of *Serbian Eastern Orthodox Diocese v. Milivojevich,* 426 U.S. 696 (1976) decided by this Court. In *Piletich* the factual situation is similar to the case at bar; and there the Minnesota Court warned against deciding these types of cases on structure alone. After recognizing that mere structure alone is insufficient to give the denomination an interest in the property, the Minnesota Court then looked at the majority rule principle as set out in *Jones v. Wolf.* The Minnesota Court found that the Constitution of the denomination gave church congregations the power to "acquire and hold either personal or real properties, and have all the rights and obligations in that capacity." 328 N.W. 2d at 702. That Court then found that the presumptive rule of

majority representation must result in a judgment for the majority in the local church under the deeds, local charter, and the Constitution of the denomination following the directions of this Court in *Jones v. Wolf*. In speaking of the reasons the neutral principles approach is a better approach than other approaches, the Minnesota Supreme Court stated:

> This approach obviates consideration of what litigants belong to a "hierarchical church", an area fraught with constitutional pitfalls and provides a forum even for members of a hierarchical church which has not developed effective rules for settling property disputes among members. 328 N.W. 2d at 701.

On cross-motions for summary judgment, the Minnesota Supreme Court in *Piletich* unanimously rejected the minority's trust argument and held that the local church corporation could retain its property. The Court recognized that judicial resolution of church property disputes must be "contract-based" with courts "deferring to decisions of church hierarchy only when the church rules or constitution. . . specifically require." 328 N.W. 2d at 701.

Thus to give a denomination an interest in local church property simply on the basis that the denomination is "hierarchical" is to "establish a religion" in direct violation of the prohibition in the First Amendment to the U. S. Constitution. Such would violate the mandates of this Court in the cases of *Kedroff v. St. Nicholas Cathedral*, 344 U.S. 94 (1952) and *Kreshik v. St. Nicholas Cathedral*, 363 U.S. 190 (1960) which held that a State cannot do, by either legislative action or judicial fiat, for the parties what the parties have not first provided for between themselves in their contract with each other. Hence in the case at bar, the binding of the local property to the denomination is solely by virtue of state action (judicial in this instance)

and clearly constitutes an establishment of religion of the denomination and denial of the free exercise of religion to the members of the local congregation.

Secondly, the Court of Appeals of Maryland apparently refused to let this local church withdraw from this denomination and retain its property because:

> The Trustees of Babcock were bound by their own by-laws to follow the established mandates of United (App. A p. A17).

Indeed, both Article I, Section 2 and Article V, Section 3 of Babcock's corporate by-laws acknowledge the affiliation of this local church corporation with United and that the corporation was "subject to" and "subordinate to" the Constitution of United. Obviously, all these by-law provisions do is refer the parties and the courts back to the Constitution of United to determine the respective rights of the parties in this local church property. It is undisputed that all parties in this church property dispute are bound by the terms of United's Constitution as contained in its Book of Order. However, your Petitioners respectfully show that it was stipulated by the parties in this case that nothing in that Book of Order prohibits this local church from withdrawing from this denomination and retaining its local church property, and there was no express trust language in United's Constitution that grants to the denomination any interest in this property under the facts presented in the case at bar.

Six sections of United's Constitution are cited in the Maryland Court of Appeals' decision. These are Sections 41.08, 41.15, 62.04, 62.08, 62.11 and 62.12. (Sections comparable to 41.08, 41.15, 62.04, 62.08 and 62.11 were in the PCUS Constitution which was before this Court in *Jones v. Wolf* and are contained in Appendix F.) Section 62.11 and 62.12 deal specifically with property and were the

ones most relied upon by the Maryland Court. These sections must be read in the light of the stipulations in this case. The parties stipulated as follows:

> Except for 62.11 quoted above, there is no specific provision in the constitution of United or any relevant document of title involved in the case at bar, which gives the Presbytery of Baltimore or any higher judicatory in United, any proprietary or contractual interest in the real or personal property involved in this lawsuit. Likewise, on March 14, 1981, and prior to that date, there was no specific provision in the Constitution of United imposing an express trust on local church property for the benefit of the presbytery, the synod, the General Assembly or the denomination as a whole.
>
> * * *
>
> There are no express provisions in the Constitution of United outlining any method or procedure for a local United Church to change its denominational affiliation, nor is there any express provision permitting or prohibiting a local church to withdraw from United. Except as Section 62.11 may apply, there are no specific provisions in the Book of Order imposing a penalty or forfeiture of property upon such a withdrawal.
>
> * * *
>
> On March 14, 1981, and until the present date, Babcock has not been dissolved by the Presbytery, or become extinct by reason of the dispersal of the church's members, the abandonment of the church's work or other cause.

From these stipulations it can be seen that United admits that no express trust is contained in its Constitution, with the possible exception of 62.11, and that United's Constitution gives no proprietary or contractual interest in the

local church's property to the Presbytery of Baltimore or any higher church court of United. When read in light of these stipulations, it is clear that Section 62.12 is a permissive rather than a proprietary grant. The denomination received no property interest through this section nor has the denomination claimed that this section granted them any property interest in the local church property. It was merely a provision included in the Book of Order to prevent a local church from becoming financially overburdened by overencumbering its real property. It grants to the Presbytery a veto over certain situations but does not grant the Presbytery any property interest. Further, it is to be noted that Section 62.12 does not purport to deal with all local church property. For example, it deals only with the *real* property and does not deal with *personal* property. It does not restrict a local church in buying *real* property not subject to an encumbrance, nor does it entitle Presbytery to any money or proceeds of a sale when local church property is sold. Additionally, it does not cause Presbytery to incur legal obligations to pay the debt of the local church simply by granting permission to the local church to mortgage its property. Accordingly, Section 62.12 is permissive and supervisory only.

If any trust interest is created in the Book of Order it must be found in Section 62.11. While Section 62.11 of the Book of Order does provide for a trust in favor of United in the property of a local church, far from creating a general trust, it does so only in the very limited circumstances set out in the section. In order to invoke the trust powers of this section it is necessary that there either be a formal dissolution of the local church by the Presbytery or the extinction of the local church by reason of the dispersal of its members, the abandonment of the local church's work or other cause. As the foregoing stipulation clearly indicates, the criteria required for the operation of Section

62.11 are not present in the case at bar. It is specifically stipulated that Babcock has not been dissolved by the Presbytery nor has it become extinct by reason of the dispersal of its members, the abandonment of its work or for other cause. Therefore, since it was expressly stipulated that when Babcock withdrew from United there was no express trust on local church property in favor of the denomination nor did United have any proprietary interest in Babcock's property, either express or implied, except by virtue of Section 62.11, and it is further stipulated that the factors necessary to invoke Section 62.11 have not occurred in the case at bar, it is clear that neither United nor any of its constituent judicatories have any property interest in this local church property.

As was pointed out in the case at bar, United attempted to pass an amendment to its Constitution in 1929 which would have imposed an express trust on local church property for the denomination. This amendment failed. It is the only time in the history of United that an attempt was made to impose such an express trust until after *Jones v. Wolf*. Recognizing that it had not developed effective rules for settling property disputes among its members, United then went to work to propose such a property amendment to its Constitution which would impose an express trust on local church property for the denomination. This amendment did pass and became a part of United's Constitution in May 1981, after the controversy in the subject case arose. So at the time the dispute arose in the instant case, there was no trust in local church property for the denomination as has been stipulated by the parties in the Agreed Statement of Facts.

Hence, it is clear that there is no language in "legally cognizable form" in the documents affecting the title to the property of Babcock nor in the documents affecting

the relationship of Babcock to United that create any interest for United in the property of Babcock. By granting such an interest to United, the Maryland Court is in direct conflict with this Court's decision in *Jones v. Wolf*.

Two main questions were before the Maryland Court, to wit:

1. Could Babcock give its property to Merritt?

2. When a majority of the members of Babcock severed their ecclesiastical affiliation with United, did this majority retain the right to the ownership, use and possession of the property belonging to Babcock? (App. C p. A22).

The Maryland Court answered the first question by stating that the gift from Babcock to Merritt was void. At this point we do not wish to argue with this conclusion. It is the Maryland Court's answer to the second question that we raise specifically in this Petition. There the Maryland Court denied the majority of the members of Babcock their right to sever their ecclesiastical affiliation with United and retain the ownership, use and possession of Babcock's property. This judgment by the Maryland Court was in spite of Stipulations in the Agreed Statement of Facts by the parties, to which we have previously pointed, that there was no method or procedure in United's Constitution outlining any specific way or procedure for a local United church to change its denominational affiliation nor was there any express provision permitting or prohibiting a local church from withdrawing from United nor was there any specific provision imposing a penalty or forfeiture of property upon such withdrawal, except as might be found in Section 62.11. We have further pointed to the mortgage on the disputed property given by Babcock in 1951 to the Board of National Missions of United (App. G) specifically stating that "this mortgage

and the obligation which it secures shall become due and payable immediately upon the mortgagor's severing its denominational connection with the General Assembly of the Presbyterian Church in the United States of America. . ." In *Jones v. Wolf,* this Court stated that in order for a civil court to enforce a trust on local church property on behalf of a denomination there must be language in some document in a "legally cognizable form". We submit that this same reasoning would apply to the right of a local church to withdraw from a denomination. We submit that the above language clearly shows that the parties recognized the right of the local church to withdraw from the denomination and the right of the local church to its property upon a withdrawal. We believe this language should be as binding in favor of the local church as would language of trust in the documents be binding in favor of the denomination. The Maryland Court therefore incorrectly interpreted this Court's ruling in *Jones v. Wolf* in denying Babcock the right to withdraw and keep its property in the light of this clear language "in legally cognizable form" as a part of the contract between the parties.

Finally, we believe this Court's reasoning in *Larkin v. Grendel's Den, Inc.,* 74 L. Ed. 2d 297 (decided December 13, 1982) applies to the case at bar. Therein, this Court made an excellent analysis of the prohibitions of the Establishment Clause of the First Amendment to the U. S. Constitution. One such prohibition is to avoid "an excessive government entanglement with religion". In discussion of the Establishment Clause of the First Amendment Chief Justice Burger wrote:

> As these and other cases make clear, the core rationale underlying the Establishment Clause is preventing "a fusion of governmental and religious functions."

> The Framers did not set up a system of government in which important, discretionary governmental powers would be delegated to or shared with religious institutions. 74 L. Ed. 2d at 307.

The Maryland Court's ruling in favor of United violates the test applied in *Larkin*. The unrebutted evidence shows that United's internal laws did not give United a trust in Babcock's property at the time Babcock disaffiliated; nor did those laws give any organ of United power to arbitrate property disputes with disaffiliating churches. The Maryland Court's decision would strip the members of Babcock of their property, regardless of whether the contract from which United draws its rights-the Book of Order-gives it such power. Giving a religious body civil power over members beyond those powers assented to by the members is nothing but a *pro tanto* delegation of governmental powers to that religious body. Such a delegation of power is flatly forbidden by *Larkin*. Such a delegation is even more indefensible, when as is the case here, the persons over whom the religious body seeks to assert power are no longer members of the religious body. Indeed, the Maryland Court's ruling in this case would be even more egregiously violative of the Establishment Clause than the statute in *Larkin* for there is not even a colorable secular interest in so ruling. There can be no secular reason for a court to interfere with the contract formed by the internal laws of United for all to read in the Book of Order. *Larkin* thus confirms that the Maryland Court violated the Establishment Clause of the First Amendment to the Constitution of the United States in granting to United an interest in this local church's property.

For all these reasons, we submit that the Court of Appeals of Maryland incorrectly interpreted this Court's ruling in *Jones v. Wolf* in granting United an interest in

the property of a withdrawn local church in the absence of trust language in some "legally cognizable form" in the favor of the denomination and in denying the right of a local church to withdraw and keep its property in the absence of the "legally cognizable" language prohibiting the same in the contract between the parties.

CONCLUSION

We respectfully urge the Court, for all of the reasons set forth above, to grant a Writ of Certiorari and to reverse the decision below.

Respectfully submitted,

WARREN JACKSON WILLIAMSON
(Counsel of Record)
P.O. Box 467
Greenville, Alabama 36037
(205) 382-2635

MARK E. WERNER, II
1102 Court Square Building
Baltimore, Maryland 21202

DAVID S. PEARL
1209 Court Square Building
Baltimore, Maryland 21202

Attorneys for Petitioners

APPENDIX

APPENDIX A

Filed: August 17, 1983

OPINION OF THE COURT OF APPEALS OF MARYLAND

OPINION OF COURT OF APPEALS OF MARYLAND

September Term, 1982

Babcock Memorial Presbyterian Church, et al.

v.

The Presbytery of Baltimore of The United Presbyterian Church in the United States of America, et al.

Docket No. 102

Reported - 464 A.2d 1008

Opinion by Smith, J.

In this case involving a dispute as to ownership and control of church property we shall affirm the decision of the Court of Special Appeals in *Presbytery v. Babcock Mem. Pres. Ch.*, 52 Md. App. 428, 449 A.2d 1190 (1982).

Judge Thompson stated for the Court of Special Appeals:

> "Certain disputes, ecclesiastical in nature, arose between Babcock [Memorial Presbyterian Church] and the higher judicatories of [The] United [Presbyterian Church in the United States of America], and

at an August 5, 1980 meeting, the Session [of Babcock] voted to recommend to the congregation that appropriate actions be taken to sever Babcock's relationship with [the] Presbytery [of Baltimore] and United. On September 18, 1980, the Presbytery, at its regular monthly meeting, established an Administrative Commission to investigate the alleged disorders at Babcock and to recommend to the Presbytery whether Babcock's Session should be dissolved and replaced with the Administrative Commission as provided in The Book of Order.[3] Meetings were held between the Commission and leadership and congregation of Babcock without resolution of the problem. The Session, on March 14, 1981, made an 'absolute and irrevocable gift' of the subject property to Merritt.[4] On March 16, 1981, after the deed of the real property had been recorded in the Land Records of Baltimore County, a letter advising of the gift transfers was hand delivered to Presbytery. On March 23, 1981, at a meeting called by the Session and Board of Trustees of Babcock, the membership voted by a majority of those present (228-6) to withdraw from United and its constituent judicatories. The membership further ratified and adopted as their action, the acts of the Session and the Board of Trustees in conveying the property as gifts to Merritt.

"In late March 1981, the Administrative Commission assumed possession of the Babcock property and required Babcock congregants to leave the premises. On several occasions thereafter, members of Merritt attempted to gain access to the church for purposes of a congregational meeting, but were denied by the appellants. Merritt thereafter filed suit in ejectment and trespass to regain possession of the property and

the Presbytery and members of the Commission brought suit to have the deeds to Merritt set aside."

"3. Section 41.15 of The Book of Order provides:

"'15. Whenever, after a thorough investigation, and after full opportunity to be heard has been accorded to the session in question, the presbytery of jurisdiction shall determine that the session of a particular church is unable or unwilling to manage wisely the affairs of its church, the presbytery may appoint a commission composed of ministers and ruling elders, with the full power of a session. This commission shall take the place of the existing session, if any, which shall cease to act until such time as the presbytery shall otherwise direct.'

"4. Merritt Boulevard Presbyterian Church of Dundalk, Inc., was incorporated on April 15, 1980 as an unaffiliated Presbyterian Church. It has fourteen members and its principal place of worship is in Dundalk, Maryland." 52 Md. App. 431-33.

Merritt Boulevard Presbyterian Church of Dundalk, Inc., filed a suit in ejectment against the Presbytery of Baltimore of The United Presbyterian Church in the United States of America and the Administrative Commission designated by it relative to Babcock. The suit sought to gain possession of real property at 8240 Loch Raven Boulevard in Baltimore County, said to have been conveyed to Merritt by the Session and the Board of Trustees of Babcock. The Presbytery and its Administrative Commission than filed a suit in equity against Babcock, its former pastor, its former associate pastor, a number of persons who were members of the deposed Session of Babcock, the various

individual members of the Board of Trustees of Babcock, Merritt, and the members of the Session of Merritt. It sought an interlocutory and permanent injunction against interference with the Administrative Commission in the exercise of its authority over the affairs of Babcock, that Merritt and the members of its Session be ordered to transfer and convey to Babcock the real and personal property received by it from Babcock, an accounting, and other relief. Former members of Babcock filed a counterclaim for release of its personal property. The cases were submitted to the Circuit Court for Baltimore County on an agreed statement of facts.

We are further informed by the agreed statement of facts:

> "Approximately 50 to 75 members of the Babcock congregation who remain members of UNITED met at Faith Presbyterian Church, 5400 Loch Raven Boulevard, until June 21, at which time they resumed UNITED worship services and other related activities in the church building at 8240 Loch Raven Boulevard. Approximately 250 to 300 of those who have withdrawn from UNITED are meeting at the Loch Raven Elementary School. Babcock has not been dissolved by the Presbytery or become extinct by reason of the dispersal of its members, the abandonment of its work or other cause."

The trial court found "that 'United' maintains a congregational polity with respect to the use and ownership of local church property" and that the original Babcock Session and its Board of Trustees were legally entitled to make absolute and irrevocable gifts of that church's real and personal property to Merritt. An appeal followed to the Court of Special Appeals which reversed. We granted a writ of certiorari.

I

The Park Presbyterian Church of Baltimore City was incorporated in 1891. Art. VI of its charter provided that it should "forever remain a Presbyterian Church in accordance with the Standards of the Presbyterian Church of the United States." It began as a mission of Brown Memorial Presbyterian Church, a member of the Presbytery of Baltimore, under the leadership of that church's pastor, the Rev. Maltbie D. Babcock. It was originally located at North and Madison Avenues in Baltimore City on a lot purchased by funds provided as a part of Brown Memorial's mission effort. Assistance in the erection of its church building was provided by friends of Dr. Babcock at Brown Memorial and by Brick Presbyterian Church in New York City. Virtually from its inception Park was a member of the Presbytery of Baltimore. The Presbytery of Baltimore was part of The Presbyterian Church in the United States of America which later merged with The United Presbyterian Church of North America to form the church now known as The United Presbyterian Church in the United States of America.

Park was incorporated under our general religious corporation law now embodied in Maryland Code (1975) §§ 5-301 to -313, Corporations and Associations Article.[1] Relative to what was then Code (1957) Art. 23, §§ 256 to 270, upon which those sections are based, Judge Barnes commented for the Court in *Md. & Va. Eldership v. Sharpsburg*, 249 Md. 650, 657, 241 A.2d 691 (1968) (*Eldership I*),

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1. At the time of Park's incorporation the General Assembly had not enacted legislation relative to Presbyterian churches such as that relative to the United Presbyterian Church in the United States of America now found in Code (1975, 1982 Cum. Supp.) §§ 5-329 to -332, Corporations and Associations Article. We do not consider those sections in reaching our decision here. If we were to do so it would reinforce our conclusions.

vacated, 393 U.S. 528, *reaff'd*, 254 Md. 162, 254 A.2d 162 (1969) (*Eldership II*), *appeal dismissed*, 396 U.S. 367 (1970), that the statute "is based upon and largely follows the original legislation on this subject, i.e., the Act of 1802, chapter 111." We know not what the law of the Church was at the time of Park's incorporation but today § 62.04 of United's Book of Order requires each local church to be incorporated unless forbidden by state law.

Despite inferences to the contrary which may be drawn from corporate names of some churches, "[u]nder the Maryland system of incorporating religious societies the trustees and not the congregation constitute the corporation." *Phillips v. Insley*, 113 Md. 341, 349, 77 A. 850 (1910), citing *Bethel Church v. Carmack*, 2 Md. Ch. 143 (1849), and *Stubbs v. Vestry of St. John's*, 96 Md. 267, 275, 53 A. 917 (1902). *Phillips* was quoted in *Gildenhorn v. Columbia R.E. Title*, 271 Md. 387, 404, 317 A.2d 836 (1974). Numerous other states follow a similar procedure for church corporations. See C. Zollmann, *American Church Law* § 106 (1933).

In 1901 the name of Park was changed to Babcock Memorial Presbyterian Church of Baltimore City. That name, after relocation at 8240 Loch Raven Boulevard, was changed to Babcock Memorial Presbyterian Church.

At the time of the move to Loch Raven Boulevard the Presbytery made available to Babcock residual funds of Olivet Presbyterian Church of Canton. A plaque memorializing that fact appears in the narthex of Babcock.

In 1968 Babcock adopted a set of by-laws, Article 1, § 2 of which provides:

> "This church is affiliated with the United Presbyterian Church in the United States of America and is under the care of and subject to the jurisdiction

of the Presbytery of Baltimore. These By-Laws shall be subordinate to the Constitution of the United Presbyterian Church and nothing contained herein shall be interpreted to the contrary."

The original deed to Babcock for the Loch Raven Boulevard land is to "The Babcock Memorial Presbyterian Church of Baltimore City, a corporation of the State of Maryland . . . ." Neither in the granting clause nor in the habendum clause is there any restriction of any kind. On May 15, 1980, the Board of Trustees and the Session of Babcock conveyed the land in question, without consideration, to Conduit, Inc., which in turn reconveyed the land in question to the named trustees of Babcock "for the uses and purposes and with the powers and subject to the limitations hereinafter set forth . . . ." In the habendum clause it is specified that the conveyance to the trustees is "in trust for the following uses and trust purposes and with the powers and subject to the limitations hereinafter set forth" which include that they are to "hold title to the property . . . for the use and benefit of the majority of the active communicant members of that congregation presently identified as the congregation of the [sic] The Babcock Memorial Presbyterian Church," with further provisions as to who shall be members, for election of trustees, and notices of meetings. The trustees joined in the deed from Conduit "for the purpose of evidencing the assent of said church to the provisions [t]hereof" and also "for the express purpose of consenting to and accepting the trust and confidence imposed upon them." No consent of the Presbytery was obtained for the deed to Conduit or the deed to Merritt although § 62.12 of The Book of Order of United provides that a church shall not sell, mortgage or encumber its real property without the Presbytery's consent.

II

In arguing for a reversal of the decision of the Court of Special Appeals, Babcock and Merritt contend that the latter court failed to employ the neutral principles of law doctrine as enunciated by this Court in *Eldership I* and *II*, that in awarding the property of the local church to the denomination the court followed the theory of implied trust declared by this Court in *Eldership I* "as not being the law of this state," that it erred in awarding the property to the Presbytery "in the absence of a specific finding that the deeds, local church charter, or constitution of the United Presbyterian Church contained language in a 'legally cognizable form' expressing a trust or causing a reverter or forfeiture of the property of the local church to United in the event of a schism or withdrawal by the local church," and that it failed to comply with Maryland Rule 1086 in reviewing the findings of fact of the trial court. Since there was a stipulation between the parties as to the facts, there was no error on the latter point.

III

In *Eldership I*, 249 Md. 650, Judge Barnes said for the Court:

> "In considering questions in regard to the use of church property it is usually important, in the absence of express language in the deed conveying the property or making the gift, to consider the 'polity' or form of church government which the particular denomination has. In the note in 75 Harv. L. Rev., at pages 1143-4, the three general types of church polity are defined as follows:
>
> > 'At least three kinds of internal structure, or "polity," may be discerned; congregational, pres-

byterial, and episcopal. In the congregational form, each local congregation is self-governing. The presbyterial polities are representative, authority being exercised by laymen and ministers organized in an ascending succession of judicatories - presbytery over the session of the local church, synod over presbytery, and general assembly over all. In the episcopal form power reposes in clerical superiors, such as bishops. Roughly, presbyterial and episcopal polities may be considered hierarchical, as opposed to congregational polities, in which the autonomy of the local congregation is the central principle.' (Footnotes omitted.)

"In many of the hierarchical churches there may be provisions in their Constitutions, Canon Law or other controlling documents or statutes which make it clear that the property is held in trust for the uses of the parent church and its discipline and appointments. See, for example, Article 23, Section 313 (e) in regard to the holding of property in the Methodist Church. There may be a requirement that the local church include provisions in the deeds to its property that it is held in trust for the parent church in conformity to its worship, doctrine and discipline and, upon a departure therefrom, the property will revert to the hierarchical body. Even in the absence of such an express provision in the deeds to the local church property, there may be an implied consent by the local church that the local property is so held if the constitution, by-laws, canon law or statute provide to that effect. It thus appears that there are three methods by which a hierarchical denomination may maintain control of local church property:

"1. It may require reverter clauses in the deeds to the property of the local churches.

"2. It may provide in its constitution or by some other authoritative source for the reverting of the local church property to the hierarchical body upon withdrawal by a local congregation with an implied consent by the local church to this provision.

"3. It may obtain from the General Assembly an act providing for such a result." 249 Md. at 662-63.

Judge Thompson stated for the Court of Special Appeals:

"United is organized and operated under a constitution which consists of two parts: 'The Book of Confession' and 'The Book of Order.' The Book of Order contains three parts, namely: the 'Directory of Worship,' the 'Form of Government,' and the 'Book of Church Discipline.' That part of the constitution at issue is the 'Form of Government.' United is an association of local United Presbyterian churches organized into a hierarchical structure consisting of four distinct bodies known as judicatories (tribunals of ecclesiastical authority). These tribunals in ascending order of authority, according to the powers given or reserved to them by The Book of Order, are: (1) the Session, which has authority over all the affairs and activities of the particular church, (2) the Presbytery, composed of all of the United Presbyterian Churches in a geographic area, (3) the Synod, generally composed of the Presbyteries in a given state or region, and (4) the General Assembly, the highest governing body within United.

"The Presbytery of Baltimore is a non-profit, unincorporated association, its principal office being in

the City of Baltimore. Its jurisdiction entails the supervision and care of those United Presbyterian Churches located in the City of Baltimore, central and western Maryland." 52 Md. App. at 430-31.

* * *

"The relationship of the hierarchical format of the Presbyterian form of government to ownership of church property was discussed in Annot., 52 A.L.R.3d (1973) where it was stated at 417:

> 'Although the Presbyterian form of church government is without question hierarchical, there has been a considerable amount of litigation over the right of local Presbyterian churches to withdraw from the general church and retain the use and control of local church property. . . . [T]his right is uniformly denied, on the ground that the local Presbyterian Church stands in a hierarchical relationship to the general church, with respect to property matters as in other areas.' (footnote omitted).

"United's hierarchical structure is set out in The Book of Order. The tribunals are organized in ascending order into (1) the church Session, composed of the elders of local church, (2) the Presbytery, composed of several churches in a geographical area, (3) the Synod, generally composed of all presbyteries within a state, and (4) the General Assembly, the highest governing body. *See, Jones v. Wolf*, 443 U.S. 595, 621, 99 S.Ct. 3020, 61 L.Ed.2d 775 (1979).

"In Chapter XI of Section 41.08 of 'Form of Government' it is provided, in pertinent part:

> '8. The church session shall have authority over all of the affairs and activities of the par-

> ticular church, except such matters as may, by this Form of Government, be specifically accorded to . . . a higher judicatory. The session may from time to time delegate administrative responsibilities in respect to the care and management of church properties and in respect to the financial affairs of the church either to the board of trustees or to the board of deacons or in part to one and in part to the other, subject always to the superior authority and direction of the session.'

"Thus, the Session is the overseer of the church property subject to a higher judicatory if The Book of Order extends that authority to the higher judicatory. *Calvary Pres. Church v. Presbytery*, 39 Md. App. 405, 386 A.2d 357, *cert. denied*, 283 Md. 731 (1978). That the Presbytery is given this superior authority with respect to church property is shown by the following provisions of The Book of Order:

> '62.11 11. Whenever hereafter a particular church is formally dissolved by the presbytery, or has become extinct by reason of the dispersal of its members, the abandonment of its work, or other cause, such property as it may have, both real and personal, shall be held, used, and applied for such uses, purposes, and trusts as the presbytery may direct, limit, and appoint, or such property may be sold or disposed of as the presbytery may direct, in conformity with the Constitution of The United Presbyterian Church in the United States of America.
>
> '62.12 12. A particular church shall not sell, mortgage or otherwise encumber any of its real property and it shall not acquire real property

subject to an encumbrance or condition without the written permission of the presbytery transmitted through the session of the particular church.

'A particular church shall not lease its real property used for purposes of worship, or lease for more than five years any of its other real property, without the written permission of the presbytery transmitted through the session of the particular church.'

"These provisions establish that while many matters, including the management of church property are initially committed to the Session and congregation of the local church, the actions on this local level remain subject to review by the Presbytery. *Jones v. Wolf, supra,* 443 U.S. at 621." 52 Md. App. 434-36.

As was observed by the Supreme Court of Delaware in *Pencader P. Church v. Gibson et al.,* 26 Del. Ch. 375, 385, 22 A.2d 782 (1941), "The denominational character of the religious society or congregation was plainly intended to affect the legal nature of the corporation authorized to be formed."

The Supreme Court of Illinois said in *Lowe v. First Presbyterian Church,* 56 Ill. 2d 404, 308 N.E.2d 801, *cert. denied,* 419 U.S. 895 (1974):

"The United Presbyterian Church is one of two substantial Presbyterian church bodies in this country. (Annot., 52 A.L.R.3d 324, 418 n. 20, citing G. Weigel, Churches in North America (Schocken Books 1965, p. 34).) There are other smaller Presbyterian church bodies, all of similar governmental structure. That structure consists of a series of ascending bodies called Judicatories. At the lowest level is the Session composed of trustees, deacons and other members of the local congregation. At the secondary level is a Pres-

bytery made up of many local Presbyterian churches such as the Presbytery of Chicago, one of the plaintiffs here. At the third level is a Synod comprised of a number of Presbyteries, and the supreme governing body is the General Assembly, the actions of which are controlling at all lower levels. Plaintiffs' allegation that this is the structure of the United Presbyterian Church is not contested, and the nature of the Presbyterian church governmental structure has been demonstrated in a series of cases collected in the annotation in 52 A.L.R.3d 324, at 417-423. It is clear that the United Presbyterian Church is hierarchical in governmental form in that each judicatory has control of those below it. The significance here of this structure is that each member Presbyterian church is subject to the rules and directions of its Presbytery, Synod and Assembly." 56 Ill.2d 411-12.

In *Watson v. Jones,* 80 U.S. (13 Wall.) 679, 20 L. Ed. 666 (1872), the Supreme Court said:

"The questions which have come before the civil courts concerning the rights to property held by ecclesiastical bodies, may, so far as we have been able to examine them, be profitably classified under three general heads, which of course do not include cases governed by considerations applicable to a church established and supported by law as the religion of the state.

"1. The first of these is when the property which is the subject of controversy has been, by the deed or will of the donor, or other instrument by which the property is held, by the express terms of the instrument devoted to the teaching, support, or spread of some specific form of religious doctrine of belief.

"2. The second is when the property is held by a religious congregation which, by the nature of its

organization, is strictly independent of other ecclesiastical associations, and so far as church government is concerned, owes no fealty or obligation to any higher authority.

"3. The third is where the religious congregation or ecclesiastical body holding the property is but a subordinate member of some general church organization in which there are superior ecclesiastical tribunals with a general and ultimate power of control more or less complete, in some supreme judicatory over the whole membership of that general organization." 80 U.S. at 722-23.

Article V, § 3 of Babcock's by-laws provides:

"The Board of Trustees shall be the body politic or corporate to act as Trustees in the name and behalf of the Babcock Memorial Presbyterian Church to manage the estate, property, interest and inheritance of the same, and to exercise all powers granted to religious corporations by the laws of the State of Maryland subject to the provisions of the Constitution of the United Presbyterian Church in the United States of America."

It is obvious that the case at bar falls in the third class set forth in *Watson*. Babcock was organized as a Presbyterian Church. Virtually from its inception it has continued as an integral part of a larger church body. It has been the recipient as a Presbyterian Church of gifts by virtue of its affiliation. It has recognized the authority and control of the higher judicatories of United. In *Eldership I*, 249 Md. 650, Judge Barnes said for the Court:

"What was intended was to provide for the formation of religious corporations for local congregations which would hold, control and have power to dispose of *the property* of the religious corporations. The Act of 1802 and its successor acts in no way sought to establish

> any ecclesiastical polity. This was left to the corporations themselves. By the nature of the law in regard to the formation of corporations generally, the religious corporation formed under it is controlled by trustees elected by the local membership. This is true of all member corporations. This does not mean that the religious corporation thus formed may not by contract - express or implied - adopt a presbyterial or episcopal polity and, if this is done, may provide for the holding of the local church property subject to the provisions of the constitution, charter or by-laws of a denomination and the action of the authoritative agencies of such a denomination. This, however, is accomplished by the will and action of the local corporation and is in no way imposed by the State through its General Religious Corporation Law." 249 Md. 673-74 (emphasis in original).

In Art. I, § 2 of its by-laws Babcock recognized its affiliation with The United Presbyterian Church in the United States of America. In that section and in Art. V, § 3 it recognized that it is subject to the constitution of United and its trustees are to exercise their powers subject to that constitution. In Art. I, § 2 of those by-laws Babcock recognized that it is "under the care of and subject to the jurisdiction of the Presbytery of Baltimore." Thus by contract Babcock has adopted a presbyterial polity. We conclude, therefore, that the Court of Special Appeals did not err in its determination that Babcock is not a congregational church but the relationship here is one that is hierarchical in nature. Accordingly, the Presbytery has an interest in this property.

Eldership I, 249 Md. 650, has been recognized or noted as the key neutral principles of law doctrine case. See *Jones v. Wolf*, 443 U.S. 595, 602-03, 99 S. Ct. 3020, 61 L. Ed. 2d 775 (1979). Under it we are obliged to apply neu-

tral principles of law in determining the outcome of this controversy. Under the neutral principles of law doctrine we are not concerned with any dispute as to church doctrine. Under the neutral principles of law doctrine in *Eldership I* and *II* the Court examined the deed, the local church charter, the State statutes governing the holding of church property, and the provisions in the constitution of the general church concerning the ownership and control of church property.

In *Eldership I*, 249 Md. at 664, the Court noted that the constitution of the parent church body there contained no provision relative to control of local church property by the parent church. Here there is such a provision.

Zollman, op. cit., § 154 states relative to by-laws:

> "Since by-laws validly passed are a part of the law governing the corporation and its members, they must be obeyed by all concerned. Where a committee, therefore, is empowered only to expend such sums of money as the society shall place at its disposal, such committee cannot incur large obligations in employing counsel to unmask the unfitness of its pastor.
>
> "A person who voluntarily joins a church, tacitly agrees to be bound by all the rules and regulations of such church, and will not afterwards be allowed wholly to ignore and disregard such rules and regulations. As to all matters pertaining to the church, he is clearly bound by the rules and regulations of the church, unless the same are clearly illegal." *Id.* at 157.

The trustees of Babcock were bound by their own by-laws to follow the established mandates of United. It will be recalled that under § 62.12 of the Book of Order of United a church may not sell, mortgage or otherwise encumber any of its real property without the written permission

of the Presbytery transmitted through the Session of the particular church nor may it lease its real property used for the purposes of worship or lease for more than five years any of its other real property without the written permission of the Presbytery transmitted through the Session of the particular church. Section 62.08 also refers to obtaining permission from the Presbytery to sell, mortgage, or lease church property. We regard the restriction as equivalent to saying that property could not be alienated by a local church without permission of the Presbytery. To hold otherwise is to permit accomplishing by subterfuge what could not be done directly. We conclude that if the local church under United's Book of Order could not sell property without permission, it could not give it away. More importantly, however, applying neutral principles of law, the church corporation lacked power under Maryland corporation law to make the gift. It is elementary that a corporation has only such powers as are expressly granted by its chapter or by statute and such as may impliedly be derived from its corporate purposes. Babcock was granted no power by its charter to dispose of all or any part of its assets by gift. The attempted gift here was not in accord with the corporate purpose of Babcock. The action here is analogous to that referred to in a somewhat different context in *Fairmount Pres. Ch. v. Presbytery of Holston*, 531 S.W.2d 301, 306 (Tenn. App. 1975), of "a corporation, for example, . . . chartered for the purpose of promoting the interest of boys, in accord with the standards of the Boy Scouts of America" which might attempt to divert its property "to the use of Boys' Clubs or Girl Scouts, or any other organization." *Cf. Polen v. Cox*, 259 Md. 25, 267 A.2d 201 (1970).

It follows that the Court of Special Appeals was correct in its decision.

JUDGMENT AFFIRMED;
APPELLANTS TO PAY THE COSTS.

APPENDIX B

[Dated: September 27, 1983]

ORDER OF THE COURT OF APPEALS OF MARYLAND

Denying Motion for Reconsideration.

COURT OF APPEALS OF MARYLAND
Courts of Appeal Building
Annapolis, Md. 21401-1699
269-3341
Washington Area 261-2999

September 28, 1983

Mark E. Werner, II, Esquire
Attorney at Law
1102 Court Square Building
Baltimore, Maryland 21202

Re: Babcock Memorial Presbyterian Church et al. v. The Presbytery of Baltimore of the United Presbyterian Church in the United States of America et al.
No. 102 - September Term, 1982

Dear Mr. Werner:

This is to advise that your motion for reconsideration filed in the above entitled case was denied by the Court on September 27, 1983.

A copy of the mandate is enclosed herewith and the record is being returned to the Court of Special Appeals this date.

Very truly yours,

/s/ Alexander L. Cummings
Clerk

ALC/mjm
Encl.
cc. David S. Pearl, Esq.
W. J. Williamson, Esq.
Richard W. Kiefer, Esq.

In The Court of Appeals of Maryland

No. 102

September Term, 1982

BABCOCK MEMORIAL PRESBYTERIAN CHURCH et al. and MERRITT BOULEVARD PRESBYTERIAN CHURCH OF DUNDALK, INC.

v.

THE PRESBYTERY OF BALTIMORE OF THE UNITED PRESBYTERIAN CHURCH IN THE UNITED STATES OF AMERICA et al.

MANDATE

TO THE HONORABLE THE JUDGES OF THE COURT OF SPECIAL APPEALS OF MARYLAND:

WHEREAS the case of *Babcock Memorial Presbyterian Church et al. and Merritt Boulevard Presbyterian Church of Dundalk, Inc. v. The Presbytery of Baltimore of the United Presbyterian Church in the United States of America et al.* came before you and wherein the judgment of the said Court of Special Appeals of Maryland was duly en-

tered on the eighth day of September, 1982 as appears from the transcript of the record of the said Court of Special Appeals of Maryland which was brought into the Court of Appeals of Maryland by virtue of a writ of certiorari dated October 26, 1982; and

WHEREAS in the September Term, 1982 the said cause came on to be heard before the Court of Appeals of Maryland;

ON CONSIDERATION WHEREOF, it was ordered and adjudged on August 17, 1983 by this Court that the judgment be affirmed; appellants to pay the costs.

NOW, THEREFORE, THIS CAUSE IS REMANDED to you in order that such proceedings may be had in the said cause in conformity with the judgment of this Court above stated as accord with right and justice, and the Constitution and laws of Maryland, the said writ notwithstanding.

WITNESS the Honorable Robert C. Murphy, Chief Judge of the Court of Appeals of Maryland, this twenty-eighth day of September, 1983.

/s/ Alexander L. Cummings
Clerk
Court of Appeals of
Maryland

Costs:

Petition filing fee	$ 20.00
Appellants' brief	1,205.86
Appellees' brief	996.48
Appellants' reply brief	171.03
Motion for reconsideration	10.00

September 16, 1983: Motion for reconsideration filed by appellants.

September 27, 1983: Motion for reconsideration denied.

APPENDIX C

MOTION FOR RECONSIDERATION

IN THE COURT OF APPEALS OF MARYLAND

September Term, 1982

NO.: 102

BABCOCK MEMORIAL PRESBYTERIAN CHURCH, et al.,
Appellants,

V.

THE PRESBYTERY OF BALTIMORE OF THE UNITED PRESBYTERIAN CHURCH IN THE UNITED STATES OF AMERICA, et al.,
Appellees.

MOTION FOR RECONSIDERATION

Appellants, BABCOCK MEMORIAL PRESBYTERIAN CHURCH, et al., by MARK E. WERNER II, their attorney, and THE MERRITT BOULEVARD PRESBYTERIAN CHURCH OF DUNDALK, INC., et al., by DAVID S. PEARL and W.J. WILLIAMSON, their attorneys, pursuant to Maryland Rule 850, move this Honorable Court for Reconsideration of its Opinion filed August 17, 1983, and as for grounds therefor, present the following:

POINT 1

Two main questions were before this Court on this Appeal, to wit:

1. Could Babcock give its property to Merritt?

2. When a majority of the members of Babcock severed their ecclesiastical affiliation with United, did this majority retain the right to the ownership, use and possession of the property belonging to Babcock?

The Court answered the first of these questions but failed to answer the second. The Court dealt with the right of Babcock to give the property to Merritt and held:

> We regard the restriction as equivalent to saying the property could not be alienated by a local church without the permission of the Presbytery. To hold otherwise is to permit accomplishing by subterfuge what could not be done directly. We conclude that if the local church under United's Book of Order could not sell property without permission, it could not give it away. . . . the attempted gift here was not in accord with the corporate purposes of Babcock. (Opinion page 18).

The second question, which the Court failed to answer, is whether or not Babcock had the right, by majority vote, to withdraw from the ecclesiastical jurisdiction of United and maintain the ownership and right to control its local church property. A decision on this issue is necessary in order to resolve the issues between the parties raised by this lawsuit, especially since the net effect of the Court's decision is to place full ownership and control of the disputed property back in the hands of the corporation Babcock Memorial Presbyterian Church, and there are still two groups (Appellants, Babcock, and Appellees, Presbytery) claiming ownership and control of that corporation.

As this Court has consistently recognized, resort must be had to the various documents of title and to the documents (contracts) defining the relationships of the denomination (United) and local church (Babcock), both as to

each other and as to the property disputed. Therefore, the Court must scrutinize the deeds, corporate charter, and Constitution of United to see how the parties structured those relationships. See, for example, *Maryland and Virginia Eldership V. The Church of God at Sharpsburg, (Eldership)*, 249 Md. 650, 241 A. 2d 691 (1968), vac & remanded 393 U.S. 528 (1969), reaff'd 254 Md. 162, 254 A. 2d 162 (1969); *Polen V. Cox, (Polen)*, 259 Md. 25, 267 A. 2d 201 (1970); and *Smith V. Church of God at Locust Valley, etc. Maryland, (Smith)*, D.C. M.D. 1971, 326 F.Supp. 6. The documents needed are before the Court in this Appeal and the parties have made various stipulations of facts as to what those documents do and do not say and do, as found in the Agreed Statement of Facts and its two Supplements.

Both Appellants and Appellees agree that at the time this controversy arose they were both bound by the Constitution of United. The question is what inquiry can this Court make into that Constitution without violating the rights and prohibitions guaranteed by the First Amendment to the Constitution of the United States. In its last expression on this subject the Supreme Court of the United States in *Jones V. Wolf, (Jones)*, 443 U.S. 595, 99 S. Ct. 3020, 61 L. Ed. 2d 775 (1979) reaffirmed its position:

> It is also clear, however, that the First Amendment severely circumscribes the role that civil courts may play in resolving church property issues, 443 U.S. at 602.

In a number of decisions over the past decade, the United States Supreme Court has clearly defined some of the areas in which the First Amendment severely circumscribes the role that civil courts may play in resolving church property disputes. One of these areas is the degree of inquiry which a civil court may make into the

constitution of a denomination. The United States Supreme Court has clearly held that if a civil court makes a searching or extensive inquiry into church polity, such civil court violates the prohibition of the First Amendment, Justice Blackmun, for the Court, reaffirmed this rule in *Jones,* supra:

> In such cases, the suggested rule would appear to require a searching and therefore impermissible inquiry into church polity. 443 U.S. at 605.

In *Jones,* supra, the United States Supreme Court defined the limits of such an inquiry as follows:

> The neutral-principles method, at least as it has evolved in Georgia, requires a civil court to examine certain religious documents, such as a church constitution, for *language of trust* in favor of the general church. In undertaking such an examination, a civil court must take special care to scrutinize the document in purely secular terms, and not to rely on religious precepts in determining whether the document indicates that the parties have intended to *create a trust.* 443 U.S. at 604. (Emphasis added)

Even the four dissenting justices in *Jones,* agreed with this rule of inquiry. Mr. Justice Powell writing for them stated the rule:

> The object of the inquiry where the title to the property is in a local church is to determine whether there is any basis for a trust in favor of the general church. Thus, where religious documents such as church constitutions or Books of Order must be examined 'for language of trust in favor of the general church', 'a civil court must take special care to scrutinize the document in purely secular terms and not

> to rely on religious precepts in determining whether the document indicates that the parties have intended to create a trust.' It follows that the civil courts using this analysis may consider the form of religious government adopted by the church members for the resolution of intra-church disputes only if that polity has been stated, in express relation to church property, in the language of trust and property law. 443 U.S. at 611-612

This Court can and should look at the Constitution of United to determine what vote it takes to control in decisions made by a constituent body within the denomination. United's Book of Order provides under Chapter V, entitled "Of Church Government" at Section 35.01: ". . . that a majority shall govern. . . ." Likewise, Section 98.58 is also instructive, stating that:

> Members ought not, without weighty reasons, to decline to vote, as this practice might leave the decision of very interesting questions to a small proportion of the judiciary. Silent members, unless excused from voting, must be considered as acquiescing with the majority.

At a duly called congregational meeting of Babcock in March, 1981 "a majority of those present voted to withdraw from UNITED and renounced the jurisdiction of Presbytery by a vote of 228-6" (E.87). This fact was a part of the Agreed Statement of Facts by the parties.

This is as far as this Court should and needs to go in its inquiry relating to the Constitution of United in order to settle this issue between the parties. This Court properly held that, as it scrutinized the deeds in purely secular terms, it found no property interest stated therein for United:

> The original deed to Babcock for the Loch Raven Boulevard land is to "The Babcock Memorial Presbyterian Church of Baltimore City, a corporation of the State of Maryland. . .". Neither in the granting clauses nor in the habendum clause is there any restriction of any kind. (Opinion page 7).

This Court properly found that "under the Maryland system of incorporating religious societies the trustees and not the congregation constitute the corporation." (Opinion page 6) By definition, the trustees are holding the property in trust for someone or for some body and the question that still must be answered is for whom the Trustees of the Corporation hold the property in trust? The fact that it was *not* held in trust for United is settled in the Agreed Statement of Facts where the parties stipulated:

> Likewise, on March 14, 1981, and prior to that date, there was no specific provision in the Constitution of UNITED imposing an express trust on local church property for the benefit of the Presbytery, the Synod, the General Assembly or the denomination as a whole. (E-74)

Since the Constitution gives United no trust in the property, it must be held in trust for the local members of Babcock.

This exact same question came up in the case of *Presbytery of Riverside V. Community Church of Palm Springs*, 89 Cal. App. 3rd 910, 152 Cal. Rptr. 854 (Ct. App., 4th Dist., 2nd Div., 1979), Cert, den. 444 U.S. 974, 100 S. Ct. 469, 62 L. Ed 2d 389 (1979) which was also a dispute over withdrawal and retention of property by a local church of this same denomination, UNITED. There, the California Court stated at pages 926-927 of Cal. App. 3rd:

> The present dispute concerns the uses for which the property is held, the identity of the beneficiaries of the trust - the congregants of the local church, or the general church and/or perhaps, its congregants. . . . the property of a local church, even one that is part of a general church organization of hierarchical structure, is held in trust by the religious nonprofit corporation for the benefit of the local church congregation.

Thus the question still remains: Did not the majority members of Babcock have a right to take the action they took in March, 1981 in severing their ecclesiastical jurisdiction with United? If so, United lost all its jurisdiction over Babcock. The title to the property is in Babcock. The majority of the members of Babcock are entitled to control the property.

As to the right of Babcock to sever its ecclesiastical affiliation with United, the parties' Agreed Statement of Facts stipulated:

> There are no express provisions in the Constitution of UNITED outlining any method or procedure for a local UNITED Church to change its denomination affiliation, nor is there any express provision permitting or prohibiting a local church to withdraw from United. (E-75)

The issues of the right of a local church to withdraw from United has been conclusively decided by the California Court of Appeals in the case of *Presbytery of Riverside V. Community Church of Palm Springs*, 89 Cal. App. 3rd 910, 152 Cal. Rptr. 854 (Ct. App., 4th Dist., 2nd Div., 1979), Cert. den 444 U.S. 974, 100 S. Ct. 469, 62 L.Ed.2nd 389 (1979). There, the Court held:

> It is undisputed that a local church within UPCUSA may withdraw and terminate its affiliation (89 Cal. App. 3d at page 24).

Since the two *Eldership* decisions cited above, in this State, following the dictates of this Court in *Eldership,* it is required that there be an express provision prohibiting withdrawal or the local church has that right. Likewise, since *Eldership,* it is required in this State that there be an express provision imposing a forfeiture or penalty of property (or imposing a trust in favor of the denomination) in the event of schism or withdrawal or the local church (here, Babcock) retains ownership, use and possession of its property upon withdrawal. The parties stipulated that:

> Except for 62.11 quoted above, there is no specific provision in the Constitution of UNITED or any relevant document of title involved in the case at Bar, which gives the Presbytery of Baltimore or any higher judicatory in UNITED, any proprietary or contractual interests in the real or personal property involved in this lawsuit. Likewise, on March 14, 1981, and prior to that date, there was no specific provision in the Constitution of UNITED imposing an express trust on local church property for the benefit of the presbytery, the synod, the General Assembly or the denomination as a whole. (E-74)

> There are no express provisions in the Constitution of UNITED outlining any method or procedure for a local UNITED Church to change its denominational affiliation, nor is there any express provision permitting or prohibiting a local church to withdraw from UNITED. Except as Section 62.11 may apply, there are no specific provisions in the Book of Order imposing a penalty or forfeiture of property upon such a withdrawal. (E-75)

Thus, if there is no express trust in the property for the denomination as stipulated by the parties and no restriction in the deed to Babcock as found by this Court, then the Trustees of the Babcock Corporation hold the property in trust for the benefit of the members of the local church. The majority members of the local church have severed their connection from United; and United has no more authority or jurisdiction over them. Since the majority controls, the majority have the right to control and possession of the subject property. To deny the majority this right would be a clear denial to them of their right of free exercise of their religion as protected by the First Amendment to the Constitution of the United States.

In order to resolve the issues involved in this litigation, this Court must address and resolve this question of the right of Babcock to withdraw and to retain the ownership, use and possession of its property.

POINT 2

This Court held that "the Presbytery has an interest in this property" (Opinion page 16). This holding is in diametric opposition to the Agreed Statement of Facts by the parties and the law of the State of Maryland.

In the Agreed Statement of Facts, the parties stipulated:

> Except for 62.11 quoted above, there is no specific provision in the Constitution of UNITED or any relevant document of title involved in the case at bar, which gives the Presbytery of Baltimore or any higher judicatory in UNITED any proprietary or contractual interests in the real or personal property involved in this lawsuit. (E-74)

§62.11 mentioned is a provision which provides that a Presbytery can dissolve a local church or a local church can become extinct by reason of the dispersal of its members, the abandonment of its work, or other cause. In such event, the property of the local church will be applied as the Presbytery may direct. But twice in the Agreed Statement of Facts, the parties stipulated that 62.11 was not applicable to the case at Bar:

> On March 14, 1981, and to the present date, Babcock has not been dissolved by Presbytery or become extinct by reason of the dispersal of the church's members, the abandonment of the church's work or other cause. (E-75)

> Babcock has not been dissolved by the Presbytery or become extinct by reason of dispersal of its members, the abandonment of its work or other cause. (E-88)

Thus the parties stipulated that the Presbytery of Baltimore had no interest in the subject property; and this Court found such an interest in direct contravention of the facts in this case.

POINT 3

This Court found that Presbytery has an interest in this property even though the parties stipulated to the contrary. This Court found that this interest arose because "Babcock is not a congregational church but the relationship is one that is hierarchical in nature" (Opinion page 16). Thus this Court concluded that the *structure* of United, not by express provision but by implication, created a property interest in local church property in the denomination. To do so it made an extensive, searching inquiry into the polity of United in clear violation of the

premier prohibition of the First Amendment to the Constitution of the United States. The United States Supreme Court in *Jones V. Wolf*, supra, clearly found that "structure alone" is insufficient to create a property interest. The property interest must be created in the documents in language of trust in "legally cognizable form". As has been pointed out, the parties to this litigation stipulated in the Agreed Statement of Facts that no such language existed in the documents affecting this property. In the very first sentence of *Jones V. Wolf*, supra, Mr. Justice Blackmun wrote:

> This case involves the dispute over the ownership of church property following a schism in a local church affiliated with a hierarchical church organization. (440 U.S. at 597)

If the mere fact that the structure of the denomination was "hierarchical", as Justice Blackmun stated, had been sufficient to give the Presbytery an interest in the property, then the case would have ended with that first sentence. But to give the denomination an interest in the local church property simply on the basis that the denomination is "hierarchical" is to "establish a religion" in direct violation of the prohibition in the First Amendment to the U.S. Constitution.

In *Jones*, supra, both the structure of the denomination and the facts are almost identical to the case at Bar. It is true that the local church in Jones was a member of PCUS and not United. But these two denominations are so similar in their Constitutions that in June 1983 they united to form one denomination. As a matter of fact, the PCUS Book of Church Order contains almost identical provisions with all those provisions of the United Book of Order cited by this Court in its opinion. Justice Black-

mun sets out in his opinion those facts which clearly show the identical character of the two denominations. In *Jones*, he wrote:

> In the same year it was organized, the Vineville church was established as a member church of the Augusta-Macon Presbytery of the Presbyterian Church in the United States (PCUS). The PCUS has a generally hierarchical or connectional form of government, as contrasted with a congregational form. Under the polity of the PCUS, the government of the local church is committed to its Session in the first instance, but the actions of this assembly or "court" are subject to the review and control of the higher church courts, the Presbytery, Synod, and General Assembly, respectively. The powers and duties of each level of the hierarchy are set forth in the constitution of the PCUS, the Book of Church Order, which is part of the record in the present case. (443 U.S. at 597-598).

A reading of the description of the structure of United in this Court's opinion, when compared to the above recitation by Justice Blackmun, shows clearly the identical structure of the two denominations.

Look at the facts in *Jones* as recited by Justice Blackmun in his opinion:

> On May 27, 1973, at a congregational meeting of the Vineville Church attended by a quorum of its duly enrolled members, 164 of them, including the pastor, voted to separate from the PCUS. Ninety-four members opposed the resolution. The majority immediately informed the PCUS of the action, and then united with another denomination, the Presbyterian Church in America. Although the minority remained on the church rolls for three years, they ceased to

participate in the affairs of the Vineville church and and conducted their religious activities elsewhere.

In response to the schism within the Vineville congregation, the Augusta-Macon Presbytery appointed a commission to investigate the dispute and, if possible, to resolve it. The commission eventually issued a written ruling declaring that the minority faction constituted "the true congregation of Vineville Presbyterian Church," and withdrawing from the majority faction "all authority to exercise office derived from the PCUS." (443 U.S. at 598)

It can thus be seen that both the *structure* and the *facts* in *Jones* are identical to the *structure* and the *facts* in the case at Bar. If the United States Supreme Court had applied the judicial principle that this Court applied in the case at Bar to *Jones*, then the local church property would have been awarded to the denomination rather than to the majority faction of the local church. But when the *Jones* case was remanded to the Supreme Court of Georgia in the light of this U.S. Supreme Court decision, the Supreme Court of Georgia held:

The Trial Court found that the Vineville Presbyterian Church had been a connectional church within the Augusta-Macon Presbytery and the Presbyterian Church in the United States but correctly held that more than a mere connectional relationship between the local church and the general church must exist to give rise to property rights in the general church. (243 S.E. 2d at page 864)

This issue has been further clarified in the recent case of *Piletich V. Deretich*, 328 N.W. 2d 696, decided by the Supreme Court of Minnesota on December 30, 1982, with the rehearing denied on February 14, 1983. Interestingly involved in that case is the same Serbian Eastern

Orthodox denomination that was involved in the case of *Serbian Orthodox Diecese V. Milivojevich,* 426 U.S. 696 (1976) cited by both sides to this litigation numerous occasions. The Minnesota Supreme Court recognized the U. S. Supreme Court decision in *Serbian,* supra, holding as follows:

> The First Amendment requires that civil courts defer to adjudications by the highest tribunal in a "hierarchical" church organization on *issues of religious doctrine or polity* (form of government) . . . . A later decision of the highest court reiterates the principle that matters clearly committed by church law or state law to tribunals of hierarchical churches may not be reviewed by civil courts. 328 N.W.2d at 699 (Emphasis added)

It is this principle which this Court of Appeals had sought to invoke in its opinion when it quoted at length from *Watson V. Jones,* 80 U.S. 679. But what *Serbian* held is that this principle applies "on the issues of religious *doctrine or polity*"; but it does not apply to issues of the civil rights of ownership and control of real and personal property. In the case at Bar, this Court then concluded that "the Trustees of Babcock were bound by their own By-Laws to follow the established *mandates* of United." (Opinion page 17) (Emphasis added). This Court obviously concluded that due to the mere structure of United, Babcock was then bound to follow the *"mandates"* of the denomination. The charter of Babcock provided that it would remain in accordance with the *"standards"* of United. The By-Laws of Babcock provided that Babcock would be subject to the provisions of the Constitution of United. No one denies these facts. But there is nothing in the Constitution of United that says that the denomination may *mandate* the right to ownership and control of local church property. While Babcock was a member of United

it complied with and was subject to all of the provisions of the Constitution. There is no contention here that Babcock violated the Constitution. Now that Babcock has severed its ecclesiastical affiliation with United, it is no longer subject to its jurisdiction. There is a vast difference between following the provisions of the Constitution of United and following its *mandates*. It is the contract between Babcock and United that controls. That contract is the Constitution, United cannot *mandate* that it has an interest in local church property when the Constitution does not give it such an interest in "legally cognizable terms".

After recognizing that mere structure alone is insufficient to give the denomination an interest in property, the Minnesota Court in *Piletich V. Deretich*, supra, looked at the majority rule principle as set out in *Jones*, supra, and stated:

> The Court in Jones also observed that "majority rule is generally employed in the governance of religious societies . . . Furthermore, the majority faction generally can be identified without resolving any question of religious polity. (328 N.W.2d at 702)

The Minnesota Supreme Court found that the Constitution of the Mother Church gave church congregations the power to "acquire and hold either personal or real properties, and have all the rights and obligations in that capacity". (328 N.W. 2d at 702). That Court then found that the presumptive rule of majority representation must result in a judgment for the majority in the local church under the deeds, the local charter and By-Laws and the Constitution of the Mother Church.

In speaking of the reasons the neutral principles approach is a better approach than other approaches, the Minnesota Supreme Court stated:

> This approach obviates consideration of whether the litigants belonged to a "Hierarchical church", an area fraught with constitutional pitfalls and provides a forum even for members of a hierarchical church which has not developed effective rules for settling property disputes among members. 328 N.W. 2d at page 701.

As has been pointed out in the case at Bar, United attempted to pass an amendment to its Constitution in 1929 which would have imposed an express trust on local church property for the denomination. This amendment failed. It is the only time United in its history has attempted to impose such an express trust until after *Jones V. Wolf*, supra. Recognizing that it had not developed effective rules for settling property disputes among its members, United then went to work to propose such a property amendment to its Constitution which would impose an express trust on local church property for the denomination. This amendment did become a part of its Constitution in May, 1981, after the controversy in the subject case arose. So, at the time the dispute erupted in the instant case, there was no trust or property interest in local church property for the denomination, as has been stipulated by the parties in the Agreed Statement of Facts. To hold that simply because this Court has determined that United was a "hierarchical church" gives the Presbytery a property interest is to "establish a religion" in violation of the First Amendment prohibition that the State must not "establish a religion."

To award this property to the Presbytery or the denomination in the case at Bar on the basis of the *"hierarchical"* structure of United, based on an extensive and searching inquiry into its Constitution, is a clear violation of both the "free exercise" clause and the "establishment

of religion" clause of the First Amendment to the Constitution of the United States.

WHEREFORE, Appellants pray that this Honorable Court reconsider its opinion filed on August 17, 1983, modifying it as needed and expanding it to resolve all the issues involved in the case, or that, in the alternative, the case be remanded to the Trial Court on the question of right to withdrawal and retention by Babcock of the ownership, use and possession of its property and the corporation for further proceedings and findings of fact.

Respectfully submitted,

/s/ Mark E. Werner II
Mark E. Werner, II
Attorney for Appellants, Babcock Memorial Presbyterian Church, et. al

/s/ David S. Pearl
David S. Pearl

and

/s/ W. J. Williamson
W. J. Williamson
Attorneys for Appellants, The Merritt Boulevard Presbyterian Church of Dundalk, Inc., et. al.

I HEREBY CERTIFY that on this 16th day of September, 1983, copies of the aforegoing Motion for Reconsideration were hand-delivered to Richard W. Kiefer, Esquire and Dorothy M. Beaman, Esquire, Hooper, Kiefer & Cornell, 343 North Charles Street, Baltimore, Maryland 21201, Attorneys for Appellees.

/s/ Mark E. Werner II
Mark E. Werner, II

APPENDIX D

Filed: November 17, 1981

OPINION OF CIRCUIT COURT FOR BALTIMORE COUNTY

Babcock Memorial Presbyterian Church, et al.

v.

The Presbytery of Baltimore of The United Presbyterian Church in the United States of America, et al.

Case No. 108725

Opinion by William R. Buchanan, Sr., Judge

IN THE CIRCUIT COURT FOR BALTIMORE COUNTY
AT LAW

CASE NO. 106725

THE MERRITT BOULEVARD PRESBYTERIAN CHURCH OF DUNDALK, INC.

VS

THE PRESBYTERY OF BALTIMORE OF THE UNITED PRESBYTERIAN CHURCH IN THE UNITED STATES OF AMERICA, an unincorporated association, et al

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IN THE CIRCUIT COURT FOR BALTIMORE COUNTY
IN EQUITY

CASE NO. 108725

THE PRESBYTERY OF BALTIMORE OF THE UNITED PRESBYTERIAN CHURCH IN THE UNITED STATES OF AMERICA, an unincorporated association, et al

VS

BABCOCK MEMORIAL PRESBYTERIAN CHURCH, a body corporate, et al

CROSS BILL

BABCOCK MEMORIAL PRESBYTERIAN CHURCH, a body corporate, et al

VS

THE PRESBYTERY OF BALTIMORE OF THE UNITED PRESBYTERIAN CHURCH IN THE UNITED STATES OF AMERICA, et al

MEMORANDUM OPINION

The above captioned cases came before the Court on October 2, 1981 on Motions for Summary Judgment. In Law Case No. 106725, Plaintiff, The Merritt Boulevard Presbyterian Church of Dundalk, Inc., hereinafter called "Merritt", has filed a Motion for Summary Judgment and the Defendant, The Presbytery of Baltimore of the United Presbyterian Church in the United States of America, et al, hereinafter called "Presbytery", has also filed a Motion for Summary Judgment. In Equity Case No. 108725, Plaintiff, "Presbytery", has filed a Motion for Summary Judgment as have the Defendants, Babcock Memorial Presbyterian Church, et al, hereinafter called "Babcock". Further, "Merritt", as a defendant in the Equity Case,

has also filed a Motion for Summary Judgment. The Court has considered the exhaustive memoranda, the arguments of counsel, and the significant case law which is applicable to the issues presented in these cases.

For purposes of clarity, the Court will first address the motions filed in the Law Case before proceeding to a discussion of the motions filed in the Equity Case.

In the Law Case, "Merritt" has brought an action in ejectment against the "Presbytery" for possession of certain real property known as 8240 Loch Raven Boulevard. Further, "Merritt" asks the Court to order the "Presbytery" to return certain personal property.

The factual circumstances from which these cases arise is set out in an Agreed Statement of Facts which has been submitted by the parties. Therefore, the facts will not be set out here, but will be referred to liberally.

A Plaintiff, in order to prevail in an action in ejectment, must establish three basic tenets. First, Plaintiff must recover on the strength of its own title; second, Plaintiff must show that it has legal title; third, Plaintiff must have a right of possession. These requirements have been referred to as the three "cardinal rules" of ejectment law. *Janoske v. Friend*, 261 Md. 358, 275 A.2d 474 (1971).

Further, if a Plaintiff is to prevail in an action for trespass to chattels, it must prove that at the time of the trespass it must either have possession of the property or title to same with the immediate right of possession. *Poe* Section 232.

In examining the issues before the Court, it is clear that resolution of this dispute requires this Court to determine one central issue—who owns the property in question? "Merritt", in claiming ownership of the property

in dispute, relies on its record title to the property as reflected by the deeds recorded in the Land Records Office for Baltimore County. (Plaintiff's Exhibit 1 and Exhibit 6). However, the dispute in this case requires the Court to determine whether "Babcock" had the power to convey its real and personal property, by irrevocable gift, to "Merritt". If the Court determines that "Babcock" had the capacity to make the conveyances it must then determine whether said conveyances were fraudulent and should be set aside. Therefore, this Court must first set out the means by which a civil court may determine the ownership of church property where such ownership is in dispute, and then, through those means, determine ownership of the property in this case.

"Thou shall not delve deeply into jurisdictional disputes among churches." *Calvary Presbyterian Church of Baltimore City v. Presbytery of Baltimore of the United Presbyterian Church in the United States of Amerca,* 39 Md. App. 405, 406, 286 A.2d 357 (1978), *cert. den.,* 283 Md. 731 (1978). The Supreme Court, since the landmark case of *Watson v. Jones,* 80 U.S. 679 (1871), has held that civil courts may not adjudicate ecclesiastical matters when confronted with disputes involving churches. However, civil courts are permitted to resolve disputes concerning church property if done in a manner which is not prohibited by the First and Fourteenth Amendments of the federal Constitution.

One of the permissible methods by which courts may resolve or adjudicate church property disputes is to predicate its decision upon 'neutral principles of law'. *Jones v. Wolf,* 99 S. Ct. 3020 (1979). The Court of Appeals of Maryland adopted the 'neutral principles of law' approach in *Maryland and Virginia Eldership v. Church of God at Sharpsburg,* 249 Md. 650, 241 A.2d 691 (1968), *vacated*

and *remanded*, 393 U.S. 528, *reaff'd*, 254 Md. 162, 254 A.2d 162 (1969), *appeal dismissed*, 396 U.S. 367 (1970).

Jones v. Wolf, supra, the most recent decision of the Supreme Court with respect to the issues presented here, has redefined or clarified the concept of 'neutral principles of law'. Mr. Justice Blackmun, writing for the majority, stated:

> The primary advantage of the neutral principles approach are that it is completely secular in operation and yet flexible enough to accommodate all forms of religious organization and polity. The method relies exclusively on objective, well-established concepts of trust and property law familiar to lawyers and judges. It thereby promises to free civil courts completely from entanglement in questions of religious doctrine, polity and practice. *Jones v. Wolf*, 99 S. Ct. at 3025.

Mr. Justice Blackmun also set out the measures by which churches could insure that in the event of a dispute as to the ownership of church property, the resolution of that dispute will comport with the intentions of the parties:

> Through appropriate reversionary clauses and trust provisions, religious societies can specify what is to happen to church property in the event of a particular contingency or what religious body will determine the ownership in the event of a schism or doctrinal controversy. *Jones v. Wolf*, 99 S. Ct. at 3025-6.

It is clear that under the 'neutral principles of law' approach, a court is permitted to consider the language of the deeds, the terms of the local church's charter, state statutes governing the holding of church property and the provisions of the Constitution of the General Church concerning the ownership and control of church property. Through its examination, the court may ascertain whether

the parties have set out or enumerated the process by which the court may resolve a dispute concerning church property.

> At any time before the dispute erupts, the parties can insure, if they so desire, that the faction loyal to the hierarchical church will retain the church property. They can modify the deeds or corporate charter to include a right of reversion or trust in favor of the general church. Alternatively the constitution of the general church can be made to recite an express trust in favor of the denominational church. The burden involved in taking such steps will be minimal and civil courts will be bound to give effect to the result indicated by the parties, provided it is embodied in some *legally cognizable* form. *Jones v. Wolf*, 99 S. Ct. at 3027.

It is with these guidelines and rules that this Court must make a determination in this case as to who owns the property, real and personal.

An examination of the deed by which "Babcock" acquired the real property known as 8240 Loch Raven Boulevard discloses that there is no language in the deed which creates either an express trust for the benefit of the "Presbytery" or a reversionary interest in the "Presbytery". The Agreed Statement of Facts states that all of the funds used to acquire and maintain "Babcock's" property came from the local congregation and that there were no financial contributions from a higher judicatory in the United Presbyterian Church in the United States of America, hereinafter called "United", with one exception. The Board of National Mission loaned "Babcock" $5,000.00 which was secured by a mortgage on the property, said mortgage having been released in 1966.

Therefore, the Court finds that there is no *legally cognizable* language, in fact there is no language, in the deed from which this Court can find that "Babcock" held the property in trust for the "Presbytery".

Article VI of "Babcock's" Charter provides that: The Park Presybterian Church of Baltimore City (renamed "Babcock") shall forever remain a Presbyterian Church in accordance with the standards of the Presbyterian Church in the United States.

The "Presbytery" argues that under the holding in *Calvary Presbyterian Church v. Presbytery*, supra, this Court can find that "Babcock", by the above cited provision in its charter, agreed or consented to be bound by "United's" Form of Government. It is clear from reading the *Calvary* case that Judge Gilbert's opinion relied on Calvary's charter in finding that Calvary had, in fact, consented to be bound by "United's" Form of Government. Calvary's charter provided:

> The Calvary Presbyterian Church of Baltimore City shall forever remain a Presbyterian Church in doctrine, *government* and worship in accordance with the standards of the Presbyterian Church in the United States of American (sic) and in *ecclesiastical* connection with the Presbytery of Baltimore in accordance with its organization by said Presbytery . . . *Calvary Presbyterian Church v. Presbytery*, 39 Md. App. at 410.

A comparison of the two charter provisions indicates that Judge Gilbert's finding in *Calvary Presbyterian Church v. Presbytery*, supra, was buttressed by plain and unequivocal language. The Calvary charter expressly pledges allegiance to "United's" Form of Government and its "connection" to the Presbytery in Baltimore. The "Babcock" charter lacks the plain and unequivocal lan-

guage found in the Calvary charter. Further, in order to ascertain whether or not "Babcock" had remained a Presbyterian Church in accordance with "the *standards* of the Presbyterian Church in the United States", this Court would be required to conduct an impermissible inquiry into matters of faith or ecclesiastical rule, custom or law.

Therefore, this Court finds that there is no *legally cognizable* language in "Babcock's" charter which would operate to create a trust, express or implied, in "Babcock's" property for the benefit of the "Presbytery". Further, this Court finds that there is no *legally cognizable* language in "Babcock's" charter which creates a reversionary interest in the "Presbytery" with respect to "Babcock's" property. Based on these findings, the Court must hold that the "Presbytery" has no interest or right in "Babcock's" property by virtue of "Babcock's" Charter.

A third source to which civil courts may turn for guidance in resolving church property disputes is the provisions in the constitution of the general church that govern ownership and control of church property. The provisions of "United's" constitution which are applicable in this case are contained in the *Book of Order,* specifically the Form of Government.

Initially this Court must determine the internal structure or polity that " United" adheres to. The "Presbytery" argues that "United" is a hierarchical church in all respects and, therefore, the ultimate authority in all matters, including civil property rights, resides in the higher judicatories. Under the hierarchical structure, the local church is subordinate to the higher bodies within the structure in all matters. "Merritt" argues that under *Maryland and Virginia Eldership v. Church of God at Sharpsburg,* supra, a church is not precluded from maintaining more than one form of internal structure or polity. While conceding that

in ecclesiastical matters, "United" adheres to a presbyterial or hierarchical structure, "Merritt" argues that with respect to use and control of property, "United" is congregational. Under the theory put forth by "Merritt", the local church would be autonomous with respect to the local church property, subject to any specific restrictions in the constitution of the general church. Therefore, this Court must examine the constitution of "United" to determine what polity is employed with respect to the ownership and use of property by the local churches.

"United's" constitution is specific with respect to the acquiring, holding and disposal of property by the local church:

> Each particular church shall be incorporated, cause a corporation to be formed and maintained, or in states forbidding the incorporation of religious bodies elect from its members individual trustees to receive, hold encumber, manage and transfer property, and facilitate the management of its civil affairs as may be directed by the *Session* of the particular church from time to time and according to this Constitution. (62.04).

Under Section 41.08, the session of the local church has authority over all of the affairs and activities of the local church except those matters which are "specifically accorded . . . to a higher judicatory" by the Form of Government. Further, Section 62.08, in addressing the responsibility of the trustees of the local church with respect to the church property provides:

> They shall deal with such property only as they may be authorized or directed by the session, and their authority in respect to the selling, mortgaging, and leasing of real property shall be subject . . . to the permission of the Presbytery as *herein provided.*

The "Presbytery" cites Sections 41.06, 41.07, 42.01 and 42.08 in support of its argument that "United" is an hierarchical church with respect to all matters. However, an examination of these provisions and *Calvary Presbyterian Church v. Presbytery*, supra, does not compel this Court to find that "United" is hierarchical with respect to ownership and use of property. Further, there are other provisions in the *Book of Order* that are indicative of a congregational polity with respect to the church property.

The *Book of Order*, in Section 62.12, provides that a particular church shall not, "sell, mortgage or otherwise encumber any of *its* real property and it shall not acquire real property subject to an encumbrance or condition without the written permission of the Presbytery transmitted through the session of the particular church." The "Presbytery" argues that this provision of the *Book of Order* renders the deed of the real property to "Merritt" invalid as the gift violates the constitution of "United". Therefore, this Court must determine whether an irrevocable gift is prohibited by Section 62.12.

It is clear that an irrevocable gift is neither a sale nor a mortgage. Whether "Babcock" has otherwise "encumbered" its property must be determined according to objective, well-established concepts of trust and property law. *Black's Law Dictionary* defines 'encumber' as making the land, "subject to a charge or liability. Encumbrances include not only mortgages and other voluntary charges, but also liens, *lites pendentes*, registered judgments and writs of execution." An irrevocable gift is not an encumbrance on the property; therefore, this Court finds that Section 62.12 of the *Book of Order* does not render the gift of "Babcock's" real property to "Merritt" invalid. Further, Section 62.12 has no effect with respect to the

transfer of "Babcock's" personal property to "Merritt" as by its terms only real property is affected.

The "Presbytery" argues that although a gift of all of the church property was not envisioned by "United" or the "Presbytery", this Court should find that it is prohibited by Section 62.12. In *Jones v. Wolf*, supra, the Supreme Court found that the general church could insure the disposition argued for by the "Presbytery" through the inclusion of appropriate language in the Constitution. Specifically the Court stated; "The burden in taking such steps will be minimal and civil courts will be bound to give effect to the result indicated by the parties, provided it is embodied in some *legally cognizable form.*" *Jones v. Wolf*, 99 S. Ct. at 3027. The absence of such language in the constitution of "United" compels this Court to find that the irrevocable gift by "Babcock" is not prohibited.

A provision of the *Book of Order* which is particularly germane to the issues presented in this case and is relied upon by the "Presbytery" in its argument that it now controls the "Babcock" property is Section 62.11. That section provides:

> Whenever hereafter a particular church is formally dissolved by the Presbytery, or has become extinct by reason of the dispersal of its members, the abandonment of its work, or other cause, such property as it may have, both real and personal, shall be held, used and applied for such uses, purposes, and trusts as the Presbytery may direct, limit and appoint or such property may be sold or disposed of as the Presbytery may direct in conformity with the Constitution of the United Presbyterian Church in the United States of America.

This provision was cited by Judge Gilbert in *Calvary Presbyterian Church v. Presbytery*, supra, and the "Pres-

bytery" argues that application of Section 62.11 to the facts of this case compels this Court to rule as Judge Gilbert ruled and decide that the property at issue is under the control and direction of the "Presbytery". However, the facts presented here and the facts which existed in *Calvary Presbyterian Church v. Presbytery,* supra, are different in several significant aspects.

In the *Calvary* case, the local church voted to sever its relationship with "United" but continued to possess and exercise control over its property. The "Presbytery", acting pursuant to Section 41.15 of the *Book of Order,* dissolved Calvary's session and appointed an Administrative Commission to take the place of Calvary's session. A reading of the trial judge's (Judge Sullivan) opinion in the *Calvary* case reveals that his finding that the Administrative Commission was entitled to control of Calvary's property was based on Section 41.08 of the *Book of Order* because the Administrative Commission was then functioning as the session of Calvary. Judge Sullivan, in holding that "United's" constitution established the basis upon which the "Presbytery" could assume control of Calvary's property, noted that "United" had *not* obtained an act from the legislature which would automatically revert the church property back to "United" upon the secession of a local church. Further, Judge Sullivan stated that had the "Presbytery" dissolved the Calvary Church, the real and personal property of Calvary would have come under the direct control of the "Presbytery" under Section 62.11 of the *Book of Order.*

This Court finds that Section 62.11 of the *Book of Order* did not operate to cause "Babcock's" personal and real property to revert to the "Presbytery" and further that *Calvary Presbyterian Church v. Presbytery,* supra, does not compel a finding by this Court that the "Pres-

bytery" owns or controls the property at issue in this case.

Section 62.11 only operates to create a trust in or cause a reversion of the local church property upon the occurrence of specific contingencies. The parties have submitted an Agreed Statement of Facts in which it is stated that none of the specific contingencies had or has occurred. Therefore, this Court must find that there has been no trust created in or reversion of the personal and real property of "Babcock" to the "Presbytery" under Section 62.11 of the *Book of Order*.

The crucial fact which distinguishes this case from the *Calvary* case is that "Babcock's" decision to sever its relationship with "United" was preceded by the conveyance, by irrevocable gift, of its real and personal property to "Merritt". Therefore, the action of the "Presbytery" in dissolving the session of "Babcock" and appointing an Administrative Commission to take the place of "Babcock's" session came after the property had been conveyed to "Merritt". When the Administrative Commission took the place of "Babcock's" session, it could not assume control of "Babcock's" property because at that point "Babcock" had no property over which the Administrative Commission could assume control. It is clear that if "Babcock" had voted to disassociate or sever its relationship with "United" and sought to retain control of its property, the "Presbytery" may have been able to assume control over "Babcock's" property. However, that is not the situation presented to this Court.

Calvary Presbyterian Church v. Presbytery, supra, also contains language which appears to hold that MD. CORP. & ASS'NS. CODE ANN. Section 5-331(a) (Cum. Supp.) could act alone to create a trust for the benefit of the "Presbytery" in the property of a local church or

cause a reversion of said property to the "Presbytery" upon the local church's secession from the general church. As stated previously, Judge Sullivan, in his memorandum opinion, stated that "United" had not obtained an act from the legislature which would automatically revert the church property back to "United" upon secession of the local church. However, Section 5-331(a) when read in conjunction with Calvary's charter, can be interpreted as affirming Calvary's previous pledge to "forever remain a Presbyterian Church in . . . government . . . in accordance with the standards of the Presbyterian Church in the United States of America . . . and in ecclesiastical connection with the Presbytery of Baltimore." The mandate of Section 5-331(a) would, therefore, operate to renew Calvary's pledge with respect to "United".

When Section 5-331(a) is read in conjunction with "Babcock's" charter, it is clear that the statute operates to affirm "Babcock's" promise to remain "a Presbyterian Church in accordance with the standards of the Presbyterian Church in the United States". Therefore, it can accurately be stated that after the enactment of Section 5-331(a) "Babcock" was to remain a Presbyterian Church in accordance with the standards of the United Presbyterian Church in the United States of America. However, it cannot be stated that the operation of Section 5-331(a) requires a finding that "Babcock" held its property in trust for the benefit of the general church or that "Babcock's" property would revert to the "Presbytery" upon secession or withdrawal. Further, if the constitution of "United" (*Book of Order*) does not contain provisions prohibiting the conveyances from "Babcock" to "Merritt", Section 5-331(a) cannot prohibit those conveyances by its mere enactment. As stated above, this Court has found that there are no provisions in the *Book of Order*

which prohibit the making of an outright and irrevocable gift by a local church of its real and personal property.

Another argument asserted by the "Presbytery" concerns "Babcock's" enactment of a By-Law in 1968 which states:

> This church is affiliated with the United Presbyterian Church in the United States of America and is under the care of and subject to the jurisdiction of the Presbytery of Baltimore. These By-Laws shall be subordinate to the constitution of the United Presbyterian Church and nothing contained herein shall be interpreted to the contrary.

As stated above, there being no *legally cognizable* language in the *Book of Order* establishing a trust for the benefit of "United" in "Babcock's" property, this Court will not hold that this By-Law creates, either expressly or impliedly, of its own force that which is not in the *Book of Order*.

Therefore, this Court finds that "United" maintains a congregational polity with respect to the use and ownership of local church property and that "Babcock's" Board of Trustees, with the concurrence of the session, was legally entitled to convey the real and personal property of "Babcock" to "Merritt" by irrevocable gift. The Court's finding that "United" maintains a congregational polity with respect to the use and ownership of local church property is based on two basic premises. First, the provisions of the *Book of Order* set out above do not operate to prohibit the conveyances in dispute. Second, the instances in which the "Presbytery" or some other higher judicatory may interfere with the use or ownership of local church property are expressly delineated in the *Book of Order*. Stated another way, the local church is

free to use its local property as it pleases, subject to specific limitations set out in the *Book of Order*. The ability of the local church to so utilize its property, including a gift of all of the property to a third party, is more consistent with a congregational polity than a hierarchical polity.

For the reasons set out above, the Court finds that "Babcock", through its Board of Trustees and session, possessed the legal ability to convey the real and personal property of "Babcock" to "Merritt" by irrevocable gift, vesting *legal* title in such property in "Merritt". The "Presbytery" argues that these conveyances were fraudulent and asks this Court to declare the deeds invalid.

The "Presbytery" argues that the conveyances at issue here arise under circumstances to which 'badges of fraud' attach. The finding of several 'badges of fraud' is strong evidence that fraud exists. The basis of the "Presbytery's" argument is that "Babcock" utilized the gifts to "Merritt" as a means by which it could avoid the implications of *Calvary Presbyterian Church v. Presbytery*, supra. Further, it is argued that "Babcock" never relinquished control of the property and that "Merritt" was merely a conduit utilized as part of the 'scheme' to deprive the "Presbytery" of its property.

The Court is not persuaded by the argument that these conveyances were fraudulent. When an individual or corporation has the legal capacity to dispose of its property in a certain manner and then proceeds to do so, the Court should not declare such actions invalid in the absence of express and *legally cognizable* language that the interest of some third party will be prejudiced. As stated above, the general church had both the authority and ability to dictate the result argued for by the "Presbytery" in this case. Its failure to do so or to create

a contractual or proprietary interest in the "Babcock" property requires this Court to hold that it cannot now complain that a fraud has been perpetrated upon it.

Therefore, in Law Case No. 106725, the Court finds that there being no genuine dispute as to any material fact, the Plaintiff, "Merritt" is entitled to judgment as a matter of law. It has established the three prerequisites that entitle a party to prevail in an action in ejectment, namely, legal title, right to possession and Plaintiff has recovered on the strength of its own title. "Merritt" has also established, with respect to the personal property, that at the time of the trespass, it had title to the property with the immediate right of possession. The Plaintiff "Merritt's" Motion for Summary Judgment is *GRANTED*, to wit, the Defendant "Presbytery" is permanently enjoined from interfering with the right of possession of Plaintiff in the real property located at 8240 Loch Raven Boulevard, Baltimore County, Maryland, and the personal property located in the buildings on said property. The Court declines to award damages because of the special nature of this case.

Accordingly, the Motion for Summary Judgment filed by the Defendant, "Presbytery" is *DENIED*.

Counsel for all parties have previously agreed that the resolution of the Law Case would also resolve the Equity Case.

Therefore, in Equity Case No. 108725, the Plaintiff, "Presbytery's", Motion for Summary Judgment is *DENIED*.

The Motion for Summary Judgment filed by the Defendant, "Merritt", is *GRANTED*.

The Motion for Summary Judgment of "Babcock" on its counterclaim is *GRANTED*, to wit, all personal prop-

erty, including corporate documents, the proceeds of a bank account with T. Rowe Price Prime Reserve Fund, and all mail addressed to "Babcock Memorial Presbyterian Church" shall be returned to the appropriate person(s). With regard to the use of the name "Babcock Memorial Presbyterian Church", the Court holds that the name may be used by the corporate entity so long as it exists.

Counsel for "Merritt" and "Babcock" should submit appropriate Orders in accordance with this Opinion.

/s/ Wm. R. Buchanan, Sr.
William R. Buchanan, Sr.
Judge

November 16, 1981

APPENDIX E

Filed: November 23, 1983

OPINION OF THE SUPREME COURT OF SOUTH DAKOTA

John Foss, et al.

v.

Virgil Dykstra, et al.

Appeal from the Circuit Court of the First Judicial Circuit, Lincoln County, South Dakota.

#13678, #14006

MORGAN, Justice.

These actions arise from the Ebenezer United Presbyterian Church's withdrawal from the denomination of the United Presbyterian Church in the United States of America (UPCUSA). The faction of the Ebenezer Church remaining loyal to UPCUSA and the South Dakota Presbytery initiated this action against the schismatic faction consisting of named defendants and the Ebenezer Church corporation, seeking control of the local church's property.[1] For the purposes of this opinion, we will refer to the former loyalist group and Presbytery as National Church and to the latter schismatic group as Local Church.

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1. This case was before this court in Foss v. Dykstra, 319 N.W.2d 499 (S.D. 1982). There, Local Church appealed from a judgment awarding the local property to National Church. This court remanded with instructions to the trial court to determine ownership of the property based upon the "neutral principles of law approach" recognized by the United States Supreme Court in Jones v. Wolf, 443 U.S. 595, 99 S.Ct. 3020, 61 L.Ed.2d 775 (1979).

In the course of the proceedings below, one trial judge entered an order that Local Church had violated a temporary injunction by paying out money from the church account for attorney fees and entered a judgment against the members of Local Church in favor of National Church. Pursuant to our remand, another trial judge subsequently awarded possession and control of the local property to Local Church. Both Local and National Churches appeal from the respective orders and we affirm in part, reverse in part and remand.

Local Church was organized in 1889 and became a nonprofit corporation in 1945. At that time, Local Church was affiliated with the denomination known as the Presbyterian Church in the United States of America. In 1958, that denomination merged with another denomination to form UPCUSA. On November 24, 1980, due to doctrinal differences, a majority of the members of Local Church by vote of 198 to 32 adopted a "Resolution of Secession" to sever affiliation with UPCUSA. National Church responded by initiating this action to obtain use, control, and possession of Local Church's real and personal property. At the first trial, the trial court entered judgment for National Church. This court reversed and remanded with instructions to the trial court. Foss v. Dykstra, 319 N.W.2d 499 (S.D. 1982). At the rehearing, the trial court entered a judgment for Local Church. National Church appeals, raising three issues: (1) whether the "neutral principles of law" approach should be used when the church involved is a hierarchical organization; (2) whether the trial court correctly applied the "neutral principles of law" approach; and (3) whether National Church is entitled to the use and control of the local property.

The first issue raised on this appeal, whether the "neutral principles of law" approach should be applied herein, was thoroughly briefed and argued the first time this case was before this court. Foss v. Dykstra, *supra*. Our decision adopted the general rule that when a hierarchical church is involved in a property dispute that the neutral principles of law approach applies. Jones v. Wolf, 443 U.S. 595, 99 S.Ct. 3020, 61 L.Ed.2d 775 (1979).[2] National Church argues that for this court to proceed under the "neutral principles of law" approach is, in effect, interfering with the free exercise of religion. This contention, however, was settled by the United States Supreme Court in *Jones, supra*. Moreover, since this issue was thoroughly briefed and argued and disposed of on the first appeal, we decline the invitation to again address it.

The second and third issues as stated by National Church can be combined into one issue: whether the trial court correctly applied the neutral principles of law approach. This court described that approach in *Foss, supra*, as follows:

> The neutral-principles approach calls for a completely secular examination by civil courts into church documents, deeds to the property in question, state statutes and other relevant evidence to determine ownership. The key to the neutral-principles approach is that such determination is to be made "exclusively on objective, well-established concepts of trust and property law familiar to lawyers and judges."

319 N.W.2d at 500 quoting from *Jones*, 443 U.S. at 603, 99 S.Ct. at 3025, 61 L.Ed.2d at 785. According to the United States Supreme Court, this approach requires that "a civil

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2. For a general discussion of property rights between a local church and a national church, *see* Annot. 52 A.L.R.3d 324 (1973).

court must take special care to scrutinize the document in purely secular terms, and not to rely on religious precepts in determining *whether the document indicates that the parties have intended to create a trust.*" *Jones,* 443 U.S. at 604, 90 S.Ct. at 3024, 61 L.Ed.2d at 785 (emphasis added).

The trial court made certain significant findings of fact which we summarize as follows. Local Church acquired certain real and personal property and no agency or court of UPCUSA above local level made any financial contribution thereto. Record title is vested in the local church corporation, organized and existing under the laws of South Dakota. National Church has no proprietary or contractual interest in the property under the provisions of the UPCUSA constitution or relevant documents of title. Neither Local Church's articles of incorporation nor two amendments thereto mention any denominational affiliation. Prior to the adoption of the resolution of secession there was no provision in UPCUSA's constitution prohibiting withdrawal of a local church or imposing any penalty or forfeiture of property on withdrawal, nor any provision imposing a trust on local church property in favor of National Church.

The trial court concluded as a matter of law that there was neither any express or implied trust in favor of National Church giving it control over the property; that Local Church was free to sever ecclesiastical connections with UPCUSA without penalty or forfeiture of the property; and that all civil indicia evince ownership of the property in Local Church.

Our examination of the deeds to the local property shows a number of conveyances to the Ebenezer Presbyterian Church of Lennox. None of these deeds indicate any interest or trust relationship in National Church.

Two mortgage instruments are contained in the record. The oldest mortgage, which has been paid and satisfied, was by Local Church to UPCUSA. This previous mortgage, dated November 17, 1960, contained a provision that:

> This mortgage and the obligation which it secures shall become due and payable immediately upon the mortgagor's severing its denominational connection with the General Assembly of the United Presbyterian Church in the United States of America . . . .

If this action had occurred while this mortgage was in effect, the only right National Church would have had was to accelerate the balance due. Of course, Local Church could then have paid the balance due and kept the property. Significantly, the trial court found the language of this provision to be a recognition by UPCUSA of the right to withdraw. We agree. The current mortgage on the property is not to UPCUSA nor does the current mortgage mention UPCUSA. Thus, as with the deeds, examination of the current mortgage does not indicate any interest in National Church.

The articles of incorporation of Local Church show that it was incorporated in 1945 as the Ebenezer Presbyterian Church of Lennox, South Dakota "for the purpose of maintaining and promoting religious worship according to the general usages of the *Ebenezer Presbyterian Church*." (Emphasis added.) The articles of incorporation show no connection between Local Church and UPCUSA. National Church contends that a name change by Local Church in 1974 to Ebenezer *United* Presbyterian Church (emphasis added) demonstrates a close relationship between Local Church and UPCUSA. Since the denominational change to UPCUSA occurred in 1958, the name change by Local Church sixteen years later does not demonstrate the close relationship alleged by National Church. Further, the

name change certainly does not give rise to a trust relationship between UPCUSA and Local Church.

SDCL chs. 47-22 through 47-28 govern the affairs of nonprofit corporations such as Local Church. None of these statutes create a trust relationship between National Church and Local Church.

The last source we examine to determine the existence of a trust relationship between National Church and Local Church is UPCUSA's constitution, the Book of Order. National Church points to four provisions in the Book of Order which it claims give it an interest in Local Church's property. Section 41.07 of the Book of Order states that the Session (comprised of the minister and trustees of Local Church) shall have exclusive authority over the church property.[3] Section 41.15 of the Book of Order provides that a Presbytery (comprised of the Presbyterian local churches in the area) may appoint a commission to replace the Session of a local church.[4] Section 62.11

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3. Section 41.07 of the Book of Order provides:

Subject to the provisions of the Directory for Worship, the session shall have and exercise exclusive authority over the worship of the congregation, including the musical service; and shall determine the times and places of preaching the Word and all other religious services. It shall also have exclusive authority over the uses to which the church buildings and properties may be put, but may temporarily delegate the determination of such uses, subject always to the superior authority and direction of the session.

4. Section 41.15 of the Book of Order provides:

Whenever, after a thorough investigation, and after full opportunity to be heard has been accorded to the session in question, the presbytery of jurisdiction shall determine that the session of a particular church is unable or unwilling to manage wisely the affairs of its church, the presbytery may appoint a commission composed of ministers and ruling elders, with the full power of a session. This commission shall take the place of the existing session, if any, which shall cease to act until such time as the presbytery shall otherwise direct.

provides for disposition of local church property when a local church is dissolved by the Presbytery.[5] Section 62.12 prohibits a local church from encumbering its real property without permission from the Presbytery.[6]

National Church argues that provisions similar to these provisions were discussed in Babcock Memorial Presbyterian Church v. The Presbytery of Baltimore, Nos. 1576 & 1577 (Md. Aug. 17, 1983), where the court awarded control of local property to the Presbytery. *Babcock*, however, is clearly distinguishable inasmuch as it was based upon language in the local church's charter and by-laws which is distinct from the language here. In *Babcock*, the local church's charter provided it should forever remain in accordance with the standards of the denomination. In contrast, here, Local Church's articles of incorporation state its purpose is for the usage of Local Church. Clauses similar to that clause in *Babcock's* local church's charter were also the basis for similar decisions in other cases

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5. Section 62.11 of the Book of Order provides:

Whenever hereinafter a particular church is formally dissolved by the presbytery, or has become extinct by reason of the dispersal of its members, the abandonment of its work, or other cause, such property as it may have, both real and personal, shall be held, used, and applied for such uses, purposes, and trusts as the presbytery may direct, limit, and appoint, or such property may be sold or disposed of as the presbytery may direct, in conformity with the Constitution of The United Presbyterian Church in the United States of America.

6. Section 62.12 of the Book of Order provides:

A particular church shall not sell, mortgage or otherwise encumber any of its real property and it shall not acquire real property subject to an encumbrance or condition without the written permission of the presbytery transmitted through the session of the particular church.

A particular church shall not lease its real property used for purposes of worship, or lease for more than five years any of its other real property, without the written permission of the presbytery transmitted through the session of the particular church.

cited by National Church. Protestant Episc. Church, Etc. v. Graves, 83 N.J. 572, 417 A.2d 19 (1980); Calvary Presb. Ch. v. Presbytery of Baltimore, Etc., 39 Md.App. 405, 386 A.2d 357 (1978). *But see,* Presbytery of Riverside v. Community Church, 89 Cal.App.3d 910, 152 Cal.Rptr. 854 (1979). *Babcock, supra; Calvary Presb. Ch., supra;* and *Protestant Episc. Church, supra,* are all distinguishable from the present case.

Additionally, provisions similar to three of these sections have been examined by the United States Supreme Court. In Jones v. Wolf, *supra,* and Presbyterian Church v. Hull Church, 393 U.S. 440, 89 S.Ct. 601, 21 L.Ed.2d 658 (1969), the Supreme Court examined provisions similar to Sections 41.07, 41.15, and 62.22. The Supreme Court found that none of these sections were dispositive of the neutral principles of law approach. The Georgia Supreme Court also examined these similar provisions when reviewing *Hull, supra,* on remand. The Georgia court held that these similar provisions did not give rise to a trust in favor of the denomination. Presbyterian Ch. in U.S. v. Eastern Heights Pres. Ch., 225 Ga. 259, 167 S.E.2d 658 (1969).

We agree. In our close examination of these three sections, and also the fourth section stated above, we cannot find language creating a trust in favor of National Church. We note that these parties stipulated that the Book of Order does not impose an *express* trust on Local Church's property. In reviewing these four sections to determine whether there was an *implied* trust, we find that these provisions neither singularly nor jointly create a trust in favor of National Church.[7] Although these provisions may

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7. According to the trial transcript, after Local Church withdrew, UPCUSA added an express trust provision to the Book of Order. This new section provides "that in an incorporated church, the officers hold title 'to church property for the benefit of the

(Continued on following page)

limit a local church's use of the property while it is a member of the denomination, the language does not go far enough to constitute trust or reversionary terms such as the Supreme Court was seeking in *Jones, supra.*

Accordingly, from our scrutiny of the deed, the corporate charter, the state statutes, and the Book of Order, we find that none of these create a trust over the local church property in favor of National Church. We affirm the trial court's holding in this respect.

We next examine National Church's argument that the trial court failed to properly consider which faction of Ebenezer Church is entitled to the use and control of the property, the schismatic majority or the loyal minority. Initially, National Church contends that the trial court failed to address the issue in the judgment or anywhere else in the record. We agree it does not appear that the trial court made any findings or conclusions on that specific issue but that is not surprising because it was not raised at the trial level. Having lost at the trial level, National Church retained the present attorneys who then raised the issue for the first time on a motion for new trial.[8]

Footnote continued—

corporation and the Presbyterian Church in the United States.' " Presbytery of Middle Tennessee v. The Madison Presbyterian Church, Inc., No. 82-1819-I, slip. op. at 5 and 6 (Tenn.Ch.App. August 5, 1983) quoting from Section 6-2 of the Book of Order (1982 ed.). UPCUSA's adoption of this express trust provision provides additional support to our conclusion that the Book of Order as it existed on November 24, 1980, did not contain provisions creating a trust over local property.

8. The motion for new trial set out some eight grounds centered around (6) and (7) of SDCL 15-6-59(a). We find that the trial court was correct in overruling the motion for a new trial. The grounds for new trial are specific. It is not a vehicle to drag litigation on and on by changing counsel and introducing new issues. In this instance, however, since the trial judge did specifically rule on the record on the issue of majority rule and both parties have briefed and argued the issue, for the purpose of clarification of the judgment entered below, we will consider the issue.

In response to the motion, the trial court stated to National Church's counsel: ". . . you are going to have to show me, and I don't believe you can, that the majority vote in this particular instance doesn't rule. Because everything I have found in the South Dakota statutes says that it can. And I have not seen anything in the Book of Order of the national church, or the Articles of the local congregation to indicate otherwise."

The judgment in essential part stated: "The beneficiaries (owners) of the property here at issue is the local congregation—The Ebenezer United Presyterian Church of Lennox, South Dakota, a corporation as controlled and governed by the defendants named herein and the Defendants are entitled to the use, possession and control of said real and personal property without interference by Plaintiffs."

Later, in argument on the motion, the trial court stated: "Well, the present record is, and I think the Supreme Court would surely get that from the record, when I awarded the property to the local congregation, I was doing so to the—giving to the people who were in the majority, the 198 members that voted to secede from the church."

From the foregoing it is obvious that the trial court did in fact rule on the question of majority issue, that its ruling was based on statutes, the constitution of UPCUSA and the articles of Local Church. We next examine whether or not it was correct.

National Church argues that this court must find that the minority members are the "true representatives" of Local Church since they adhere to the religious doctrine of UPCUSA. This approach, however, would necessitate this court's review of the religious doctrine involved in

this dispute. Such an approach is directly contrary to the neutral principles rule.

The Supreme Court stated in *Jones* that "[m]ajority rule is generally employed in the governance of religious societies." 443 U.S. at 607, 99 S.Ct. at 3027, 61 L.Ed.2d at 787 (citation omitted). This is exemplified by the Book of Order which states at Section 35.01 "that a majority shall govern . . . ." Additionally, SDCL 47-23-12[9] provides that in nonprofit corporations a majority of the votes is necessary to adopt the matter voted upon. Since majority representation is the well-accepted rule, *Jones, supra; see, e.g.*, Piletich v. Deretich, 328 N.W.2d 696 (1982); Jones v. Wolf, 224 Ga. 388, 260 S.E.2d 84 (1979), and is indeed the law in this state, SDCL 47-23-12, we hereby adopt the presumption of majority representation.

This presumption of majority representation can be overcome by express provision in the articles of incorporation or by-laws, *see* SDCL 47-23-12, or the constitution of the general church, *see Jones, supra; Piletich, supra;* Jones v. Wolf, *supra*. Our examination of the documents on the record in the present case reveal that they do not contain any provisions which overcome this presumption.

Here, the majority of members of Ebenezer United Presbyterian Church voted to withdraw from UPCUSA. Since there are no express provisions to overcome this presumption of majority representation, this majority represents Ebenezer United Presbyterian Church. Accord-

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9. SDCL 47-23-12 provides, in pertinent part:

A majority of the votes entitled to be cast on a matter to be voted upon by the members present or represented by proxy at a meeting at which a quorum is present shall be necessary for the adoption thereof unless a greater proportion is required by chapters 47-22 to 47-28, inclusive, the articles of incorporation, or the by-laws.

ingly, we affirm trial court's decision awarding control of the local church property to Local Church.[10]

The remaining issue to be determined on this appeal is whether Local Church violated the temporary injunction restricting its use of the local property. Soon after this action was initiated, Judge Ulrich of the First Judicial Circuit entered a temporary injunction restricting Local Church's use of this property. Thereafter, Local Church paid $20,546.53 to the attorneys representing them in this action. Subsequent to National Church's motion that Local Church had violated the temporary injunction, Judge Christensen ordered the individually named defendants representing Local Church to pay National Church $20,546.53. Local Church appeals from that order.

Above, we determined that Local Church is entitled to control over this local church property and that National Church has no interest therein. Since National Church has no interest in this property, it has no interest in this $20,546.53. Local Church is entitled to control of this sum. Accordingly, we reverse this order of the trial court and remand with instructions to vacate the order.

We affirm in part, reverse in part, and remand.

All the Justices concur.

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10. We take note of two of our previous cases in this area, Reformed Bethanien Church v. Ochsner, 72 S.D. 150, 31 N.W.2d 249 (1948) and Presbytery of Huron v. Gordon, 68 S.D. 228, 300 N.W. 33 (1941). While these cases are factually distinguishable, they also are legally distinguishable as pre-*Hull*, *supra*, and pre-*Jones*, *supra*. Thus, we overrule *Reformed Bethanien Church* and *Presbytery of Huron* to the extent that they conflict with our decision herein.

APPENDIX F

SELECTED SECTIONS OF THE BOOK OF ORDER OF THE UNITED PRESBYTERIAN CHURCH IN THE UNITED STATES OF AMERICA

41.08 8. The church session shall have authority over all of the affairs and activities of the particular church, except such matters as may, by this Form of Government, be specifically accorded to the pastor, to the congregation, or to a higher judicatory. The session may from time to time delegate administrative responsibilities in respect to the care and management of church properties and in respect to the financial affairs of the church either to the board of trustees or to the board of deacons or in part to one and in part to the other, subject always to the superior authority and direction of the session. It may add active members to any of its committees and may set up special committees of active members responsible to it.

41.15 15. Whenever, after a thorough investigation, and after full opportunity to be heard has been accorded to the session in question, the presbytery of jurisdiction shall determine that the session of a particular church is unable or unwilling to manage wisely the affairs of its church, the presbytery may appoint a commission composed of ministers and ruling elders, with the full power of a session. This commission shall take the place of the existing session,

if any, which shall cease to act until such time as the presbytery shall otherwise direct.

62.04 4. Each particular church shall be incorporated, cause a corporation to be formed and maintained, or in states forbidding the incorporation of religious bodies elect from its members individual trustees: to receive, hold, encumber, manage and transfer property, and to facilitate the management of its civil affairs in such manner as may be directed by the session of the particular church from time to time and according to this Constitution.

8. Whether by civil law the trustees of a 62.08
particular church hold title to its property or are the officers of a corporation which holds title thereto, they shall deal with such property only as they may be authorized or directed by the session, and their authority in respect to the selling, mortgaging, and leasing of real property shall be subject also to any rights reserved to the congregation by civil law or the bylaws of the particular church and to the permission of presbytery as herein provided.

The trustees of a particular church shall exercise any other powers or authorities vested in them by civil law in conformity with the actions of the session as conveyed to them from time to time. They shall also perform such other duties relating to the property or finances of the church as may be delegated to them by the session. The trustees shall submit a financial statement of all matters committed to them and

a report of their proceedings to the session for review at least once a year and at other times upon request of the session.

While trustees, like other boards and bodies of a particular church, hold authority subordinate to that of the session, the office of trustee is one of dignity and responsibility, requiring ability and devotion. Trustees, upon their election, shall be properly recognized at a service of worship and set apart to the discharge of their responsibility by prayer.

62.11 11. Whenever hereafter a particular church is formally dissolved by the presbytery, or has become extinct by reason of the dispersal of its members, the abandonment of its work, or other cause, such property as it may have, both real and personal, shall be held, used, and applied for such uses, purposes, and trusts as the presbytery may direct, limit, and appoint, or such property may be sold or disposed of as the presbytery may direct, in conformity with the Constitution of The United Presbyterian Church in the United States of America.

62.12 12. A particular church shall not sell, mortgage or otherwise encumber any of its real property and it shall not acquire real property subject to an encumbrance or condition without the written permission of the presbytery transmitted through the session of the particular church.

A particular church shall not lease its real property used for purposes of worship, or lease

for more than five years any of its other real property, without the written permission of the presbytery transmitted through the session of the particular church.

SELECTED SECTIONS OF THE BOOK OF CHURCH ORDER OF PRESBYTERIAN CHURCH IN THE UNITED STATES (the denomination involved in *Jones v. Wolf*)

CHAPTER 6 which relates to church property.

CHAPTER 6

Incorporation and Property of a Particular Church

§ 6-1. FOR AN UNINCORPORATED CHURCH

A particular church which is not incorporated, desiring to elect trustees, may select from among its confirmed membership trustees or officers of like nature who shall have the power and authority to buy, sell, or mortgage property for the church to accept and execute deeds as such trustees, to hold and defend titles to the same, to manage any permanent special funds entrusted to them for the furtherance of the purposes of the church. In the fulfillment of their duties such trustees shall subject always to the authority, and shall act soely under the instructions, of the congregation which they serve as trustees. The powers and duties of such trustees must not infringe upon the powers or duties of the Session or of the Board of Deacons. Such trustees shall be elected in regularly constituted congregational meetings.

§ 6-2. FOR AN INCORPORATED CHURCH

If a particular church is incorporated, the provisions of its charter and by-laws must always be in accord with the Constitution of the Presbyterian Church in the United States. If the congregation is an incorporated body, all the members on the confirmed roll of that church shall be members of the corporation. The officers of the corporation, whether they be given the title "Trustee" or some other title, shall be elected from among the members of the corporation in a regularly constituted congregational meeting. The powers and duties of such officers must not infringe upon the powers and duties of the Session or of the Board of Deacons. All funds collected for the support and expense of the church and for the benevolent purposes of the church shall be controlled and disbursed by the Session and the Board of Deacons as their relative authorities may from time to time be established and defined. To the officers of the corporation may be given by the charter and by-laws of the corporation any or all of the following responsibilities: the buying, selling, and mortgaging of the property for the church, the acquiring and conveying title to such property, the holding and defending title to the same, the managing of any permanent special funds entrusted to them for the furtherance of the purposes of the church, provided that such duties do not infringe upon the powers and duties of the Session or of the Board of Deacons. In buying, selling, and mortgaging real property such officers shall act solely under the authority of the corporation, granted in a duly constituted meeting of the corporation.

§ 6-3. If a church is dissolved by the Presbytery, or otherwise ceases to exist, and no disposition has been made of its property, those who hold the title to the property shall deliver, convey and transfer to the Presbytery of which the church was a member, or to the authorized agents of the Presbytery, all property of the church; and the receipt and acquittance of the Presbytery, or its proper representatives, shall be a full and complete discharge of all liabilities of such persons holding the property of the church. The Presbytery receiving such property shall apply the same or the proceeds thereof at its discretion.

Section 15-6 deals with the authority of the local Church Session. § 15-6(10) specifically deals with authority over church buildings.

§ 15-6. The Church Session is charged with maintaining the spiritual government of the church. For this purpose it has power:

(1) To inquire into the knowledge and Christian conduct of the church members under its care.

(2) To admonish, to rebuke, to suspend or exclude from the Lord's Supper those found delinquent, according to the Rules of Discipline.

(3) To instruct parents who are confirmed members to present their children for Baptism, to enroll baptized members, and to welcome baptized members to the Lord's Table. [See § 7-3, 209-10, 211-7.]

(4) To confirm the membership of persons upon profession of faith in Jesus Christ, and to

receive as confirmed members, members from other churches upon presentation of a satisfactory certificate of dismission, or in the absence of such certificate, upon reaffirmation of faith in Jesus Christ.

(5) To grant certificates of dismission to other churches, which, when given to parents shall always include the names of their children, specifying whether they have been baptized, and which when given to any member who is a Ruling Elder or Deacon shall always include the record of his or her ordination. [See § 8-3, 4, 6.]

(6) To instruct, examine, ordain, and install Ruling Elders and Deacons on their election by the church.

(7) To require these officers to devote themselves to their responsibility.

(8) To supervise the work of the Board of Deacons and examine the records of their proceedings. [See § 12-3, 5.]

(9) To develop and supervise the church school and the educational program of the church.

(10) To exercise, in accordance with the Directory for Worship, authority over the time and place of the preaching of the Word and of the administration of the Lord's Supper, over all other religious services, over the music in the services, and over the uses to which the church building and associated properties may be put.

(11) To assemble the people for worship when there is no Minister.

(12) To order collections for Christian purposes.

(13) To devise suitable measures for advancing the spiritual interests of the Church and of the congregation.

(14) To observe and carry out the lawful injunctions of the higher courts.

(15) To select from among the Ruling Elders representatives to the Presbytery and the Synod, who shall, on their return, make report of their participation.

(16) To propose to the Presbytery such measures as may be of common advantage to the whole Church.

All organizations within the particular church shall be subject to the review and control of the Session. Each organization shall, if requested, render stated reports to the Session.

Section 16-7 deals with powers of Presbytery.

Section 16-7(2) through 16-7(9) gives powers to dissolve Church Session and dissolve relationship between an Elder and local church as §41.15 of UPCUSA Book of Order.

§ 16-7. The Presbytery has power:

(1) To receive and decide references, appeals and complaints brought before it according to constitutional procedures.

(2) To assume original jurisdiction in cases in which a Church Session cannot exercise its authority.

(3) To review the records of Sessions, redress whatever they may have done contrary to order, and take effectual care that they observe the Constitution of the Church.

(4) To see that the lawful injunctions of the higher courts are obeyed.

(5) To visit churches for the purpose of inquiring into and redressing the evils that may have arisen in them. When necessary for the welfare of the Church the Presbytery may dissolve the active relationship between an Elder or Deacon and the church, provided there has been a hearing which affords procedural safeguards as in cases of process.

(6) To unite or divide churches, at the request of the members thereof.

(7) To organize new churches.

(8) To receive and dismiss churches.

(9) To dissolve churches.

(10) To control the location of new churches and of churches desiring to move to new locations.

(11) To take special oversight of churches without Pastors.

(12) To receive under its care Candidates for the Ministry.

(13) To ordain, receive, dismiss, install, remove, and judge Ministers.

(14) To establish the pastoral relationship; and to dissolve it at the request of one or both

of the parties, or, when it finds that the interests of religion imperatively demand it, following a hearing which provides procedural safeguards as in cases of process.

(15) To set apart Ministers to labor as Teachers, Evangelists, and in other works proper to the Ministry of the Gospel.

(16) To require Ministers to devote themselves diligently to their sacred calling and to censure the delinquent.

(17) To devise measures for the enlargement of the Church within its bounds.

(18) To condemn erroneous opinions which injure the purity or peace of the Church.

APPENDIX G

Mortgage from Babcock Memorial Presbyterian
Church of Baltimore City
To
The Board of National Missions
of the Presbyterian Church
in the United States of America

LIBER 2018 PAGES 569-571

THIS MORTGAGE, Made this 26th day of September in the year nineteen hundred and fifty-one by and between the BABCOCK MEMORIAL PRESBYTERIAN CHURCH OF BALTIMORE CITY, a Maryland Corporation, Mortgagor, of the first part, and the BOARD OF NATIONAL MISSIONS OF THE PRESBYTERIAN CHURCH IN THE UNITED STATES OF AMERICA, a corporation of the State of New York, Mortgagee, of the second part:

Whereas, the said mortgagor owes and stands justly indebted unto the said mortgagee in the full and just sum of $5,000.00, as evidenced by promissory note of even date herewith, which sum, together with interest at the rate of 4% per annum, payable semi-annually, shall be repaid in installments of $250.00 on the 15th days of March and September beginning on the 15th day of September, 1956, and continuing until the 15th day of March, 1966, on which last mentioned date, all unpaid balances of principal and interest shall be due and payable in any event, with the privilege to the mortgagor to prepay said mortgage debt in multiples of $250.00 on any interest payment date.

WHEREAS this mortgage and the obligation which it secures shall become due and payable immediately upon

the mortgagors severing its denominational connection with the General Assembly of the Presbyterian Church in the United States of America, ceasing to exist as an organization, failure to use the structure erected on the premises described herein as a church building, or divesting itself of title to the premises.

WHEREAS, in order to secure the prompt payment of said mortgage debt and interest as hereinbefore provided and the performance of the other convenants and agreements herein contained, these presents are executed.

Now this Mortgage Witnesseth, that in consideration of the premises and of the sum of One Dollar, the said the BABCOCK MEMORIAL PRESBYTERIAN CHURCH OF BALTIMORE CITY does grant and convey unto the BOARD OF NATIONAL MISSIONS OF THE PRESBYTERIAN CHURCH IN THE UNITED STATES OF AMERICA, its successors and assigns, in fee simple, all those two lots or parcels of ground situate and lying in the Ninth Election District, of Baltimore County, aforesaid, and describes as follows, to wit:—Beginning for the first thereof on the north line of Loch Raven Boulevard, as laid out 60 feet wide, at the beginning of the 8th or north 34 degrees 25 minutes 13 seconds west 266.42 foot line of that piece of land described in a mortgage from The Fiduciary Holding Company to Monumental Life Insurance Company, dated September 6, 1939, and recorded among the land records of Baltimore County in Liber CWB Jr. No. 1078, folio 90, said point of beginning being also the beginning of the 6th or north 34 degrees 25 minutes 13 seconds west 266.42 foot line of that piece of land described in a deed from Mt. Pleasant Corporation to Maude E. Hahn, dated May 19th, 1936, and recorded among the Land Records of Baltimore County in Liber CWB Jr. No. 967 folio 320, thence running with and binding on all of the above

mentioned 8th or 6th lines, as now surveyed, north 34 degrees 27 minutes 03 seconds west 266.42 feet to the end of the aforementioned 8th and 6th lines and also to intersect the 5th or south 57 degrees 45 minutes west 143.3 foot line of that piece of land described in a deed from Mt. Pleasant Corporation to Maude E. Hahn, dated April 21st, 1933, and recorded among the Land Records of Baltimore County in Liber L.McL.M. No. 908, folio 548, at a point distant 17.72 feet from the beginning of said 5th line; thence running with and binding on all of the 9th line of the above mentioned mortgage and also binding reversely on part of the 5th line of the above mentioned deed from Mt. Pleasant Corporation to Maude E. Hahn, dated April 21st, 1933, as now surveyed, north 57 degrees 43 minutes 10 seconds east 17.72 feet, thence running with and binding on part of the 10th line of the above mentioned mortgage and also binding reversely on part of the 4th line of that piece of land described in a deed from Mt. Pleasant Corporation to Maude E. Hahn, dated April 21st, 1933, as now surveyed, north 29 degrees 55 minutes 50 seconds west 218.71 feet to intersect the center line of a 60 foot road; thence running with and binding on the center line of said 60 foot road, as now surveyed south 58 degrees 58 minutes 10 seconds west 274.44 feet thence leaving the center line of said 60 foot road and running for a line of division as now surveyed south 31 degrees 01 minute 50 seconds east 485.00 feet to the north line of Loch Raven Boulevard and to intersect the 5th or north 59 degrees east 546.0 foot line described in a deed from Mt. Pleasant Corporation to Maude E. Hahn, dated May 19th, 1936, at a point distant 277.58 feet from the beginning of said 5th line; thence running with and binding on the remainder to the last mentioned 5th line and also on the north line of Loch Raven Boulevard as now surveyed, north 58 degrees 58 minutes 10 seconds east 268.42 feet to the place of beginning. Containing 2.96 acres of land more or less.

BEGINNING for the second thereof on the north line of Loch Raven Boulevard as laid out 60 feet wide, at the end of the 7th or south 59 degrees west 1523.83 foot line of that piece of land described in a mortgage from The Fiduciary Holding Company to Monumental Life Insurance Company, dated September 6th, 1939, and recorded among the Land Records of Baltimore County in Liber CWB Jr. No. 1078, folio 90, and said point of beginning being also the end of the 5th line of that piece of land described in a deed from the Mt. Pleasant Corporation to Maude E. Hahn, dated May 19th, 1936, and recorded among the Land Records of Baltimore County in Liber CWB Jr. No. 967 folio 320, thence binding reversely on part of the said 7th line of the aforementioned mortgage and also on the north right of way line of Loch Raven Boulevard, as now surveyed north 58 degrees 58 minutes 10 seconds east 96.46 feet to intersect the center line of a 60 foot road, thence binding on the center line of said 60 foot road as now surveyed, north 31 degrees 01 minutes 50 seconds west 485.00 feet to intersect the center line of a second 60 foot road; thence binding on the center line of said second 60 foot road, as now surveyed, south 58 degrees 58 minutes 10 seconds west 90.44 feet to intersect the 10th or north 29 degrees 54 minutes west 308.69 foot line of that piece of land described in the above mentioned mortgage, at a point distant, 218.71 feet from the beginning of said 10th line and also to intersect the 4th or south 29 degrees 54 minutes east 308.69 foot line of that piece of land described in a deed from Mt. Pleasant Corporation to Maude E. Hahn, dated April 21st, 1936, and recorded among the Land Records of Baltimore County in Liber L. McLM. No. 908 folio 548 at a point distant 89.98 feet from the beginning of said 4th line; thence binding reversing on part of the 10th line of the above mentioned mortgage and also running with and binding on part of the 4th line of the above mentioned

deed from Mt. Pleasant Corporation to Maude E. Hahn, dated April 21st, 1933, as now surveyed, south 29 degrees 55 minutes 50 seconds east 218.71 feet; thence binding reversely on all of the 9th line of the above mentioned mortgage and also running with and binding on part of the 5th line of the above mentioned deed from Mt. Pleasant Corporation to Maude E. Hahn, dated April 21st, 1933, as now surveyed, south 57 degrees 43 minutes 10 seconds west 17.72 feet; thence binding reversely on all of the 8th line of the above mentioned mortgage and also binding reversely on all of the 6th line of the above mentioned deed from Mt. Pleasant Corporation to Maude E. Hahn, dated May 19th, 1936, as now surveyed, south 34 degrees 27 minutes 03 seconds east 266.42 feet to the place of beginning. Containing 1.10 acres more or less."

BEING the same two parcels which by deed dated August 22, 1929, and recorded among the Land Records of Baltimore County in Liber T. B. S. No. 1770 folio 328 were conveyed by William A. Hahn, et al to the mortgagor herein;

SUBJECT to certain slope easements of the Maryland State Roads Commission as shown on Maryland State Roads Commission Plat No. 1131, and

SUBJECT, to a first mortgage dated July 20, 1951, and recorded among the Land Records of the Baltimore County in Liber G. L. B. No. 1960 folio 400 to secure the payment of an indebtedness in the amount of $25,000.00, to The Metropolitan Savings Bank of Baltimore.

Together with the buildings and improvements thereupon, and the rights, alleys, ways, waters, privileges, appurtenances and advantages thereto belonging or in anywise appertaining.

To Have and To Hold the aforesaid parcels of ground and premises unto and to the proper use and benefit of the BOARD OF NATIONAL MISSIONS OF THE PRESBYTERIAN CHURCH IN THE UNITED STATES OF AMERICA, their successors, heirs and assigns, forever.

Provided, that if the said the BABCOCK MEMORIAL PRESBYTERIAN CHURCH OF BALTIMORE CITY, its successors, executors, administrators or assigns, shall well and truly pay, or cause to be paid, the aforesaid principal sum of Five thousand ($5,000.00) and all the installments of interest thereon, when and as each of them shall respectively be due and payable as aforesaid, and shall perform each and all of the covenants herein on its part to be performed, then this Mortgage shall be void.

And the said Mortgagor hereby assent to the passage of a decree for the sale of the property hereby mortgaged, such sale to take place only after a default in any of the covenants or conditions of this mortgage as herein provided; and the said Mortgagor hereby also authorize the said Mortgagee, its successors, or assigns, or John H. Skeen, Jr., duly authorized Attorney or Agent of the said Mortgagee, its successors, or assigns, after any default in the covenants or conditions of this mortgage, to sell the hereby mortgaged property. Any such sale, whether under the above assent to a decree or under the above power of sale, shall be under the provisions of Article 66 of the Public General Laws of Maryland, or under any other General or Local Law of the State of Maryland relating to mortgages, or any supplement, amendment, or addition thereto. And upon any such sale of said property, the proceeds shall be applied as follows: (1) to repayment of all expenses incident to said sale, including a fee of Fifty ($50.00) Dollars and a commission to the party making the sale of said property equal to the commission allowed Trustees for making sale

of property by virtue of a decree of a Court having equity jurisdiction in the State of Maryland; (2) to the payment of all claims of the said Mortgagee its successors, administrators or assigns hereunder whether the same shall have matured or not; (3) and the surplus (if any there be), to the said Mortgagor, its heirs, personal representatives or assigns, or to whoever may be entitled to the same.

And the said Mortgagor for itself, its successors, personal representatives and assigns, do hereby covenant and agree that immediately upon the first insertion of the advertisement or notice of sale as aforesaid under the powers hereby granted, there shall be and become due by them to the party inserting said advertisement or notice, all expenses incident to said advertisement or notice, all Court costs and all expenses incident to the foreclosure proceedings under this Mortgage and a commission on the total amount of the Mortgage indebtedness, principal and interest, equal to one-half the percentage allowed as commissions to trustees making sale under orders or decrees of a Court having equity jurisdiction in the State of Maryland, which said expenses, costs and commission the said Mortgagor for itself, its successors, personal representatives and assigns, do hereby covenant to pay, and the said Mortgagee, its successors, or assigns, or John H. Skeen, Jr., their said Attorney, shall not be required to receive the principal and interest only, of said Mortgage debt in satisfaction thereof, unless the same be accompanied by a tender of the said expenses, costs, and commission, but said sale may be proceeded with unless, prior to the day appointed therefor, legal tender be made of said principal costs, expenses and commission.

And it is agreed that, until default be made in the premises, the said party of the first part, its successors, administrators or assigns, shall possess the aforesaid prop-

erty upon paying, in the meantime, all taxes and assessments, public dues and charges levied or assessed, or to be levied or assessed, on said hereby mortgaged property, which taxes, mortgage debt and interest, public dues, charges and assessments the said party of the first part covenants to pay when legally payable.

And the said party of the first part further covenants to insure, and pending the existence of this Mortgage to keep insured, the improvements on the thereby mortgaged property to the amount of at least thirty thousand ($30,000.00) dollars, and to cause the policy to be effected thereon to be so framed or endorsed as, in case of fire, to inure to the benefit of the said Mortgagee, its successors, administrators or assigns, to the extent of its lien or claim hereunder.

Witness the hand and seal of the Vice-President of the mortgagor herein and the Corporate Seal hereto affixed.

TEST:	) BABCOCK MEMORIAL PRES-
	) BYTERIAN CHURCH OF BAL-
/s/ Harry B. Melvin	) TIMORE CITY
Harry B. Melvin-	) By: /s/ Charles A. Smith
Secretary	) Charles A. Smith
	) Vice-President of the Board of
	) Trustees

State of Maryland, City of Baltimore, ss:

I Hereby Certify, that on this 26th day of September in the year one thousand nine hundred and fifty one before me, a notary public of the State of Maryland, in and for the County of Baltimore, personally appeared Charles A. Smith, Vice-president of Babcock Memorial Presbyterian Church of Baltimore City the Mortgagor named in the foregoing Mortgage, and he acknowledged the fore-

going Mortgage to be said Corporations act. At the same time also appeared John H. Skeen, Jr., attorney for the Board of National Missions of the Presbyterian Church in the United States of America, and made oath in due form of law that the consideration set forth in said Mortgage, is true and bona fide as therein set forth.

/s/ Lillian L. Brodowski
Lillian L. Brodowski, Notary Public

REC'D FOR RECORD, Sept. 27-1951 11:00 A.M. & RECORDED IN THE LAND RECORDS OF BALTIMORE COUNTY, LIBER G.L.B. 2018 FOLIO 569 GEORGE L. BYERLY, CLERK.